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PLEAS had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Room in the City of Chicago in the Division and District aforesaid on the First Monday of June (it being the 4th day thereof) in the Year of Our Lord One Thousand Nine Hundred and Forty-Five and of the Independence of the United States of America the 169th Year.

Present:

Honorable	JOHN P. BARNES,	District	Judge
"	PHILIP L. SULLIVAN,	"	"
"	MICHAEL L. IGOE,	"	"
"	WILLIAM J. CAMPBELL,	"	"
"	WALTER J. LABUY,	"	"
"	ELWYN R. SHAW,	"	"
"	WILLIAM H. HOLLY,	"	"

ROY H. JOHNSON, Clerk.

WILLIAM H. MCDONNELL, Marshal.

Thursday, June 14, A. D. 1945.

Court met pursuant to adjournment.

Present: MICHAEL L. IGOE, Trial Judge.

Petition of Debtor Respecting Certain Maturing Obligations.

IN THE

DISTRICT COURT OF THE UNITED STATES,

NORTHERN DISTRICT OF ILLINOIS,

EASTERN DIVISION.

IN THE MATTER of THE CHICAGO, ROCK ISLAND, and PACIFIC RAILWAY COMPANY, Debtor.	No. 53209.

BE IT REMEMBERED, that the following Petition of Debtor Respecting Certain Maturing Obligations was filed in the above-entitled cause in the District Court of the United States for the Northern District of Illinois, Eastern Division on this the 26th, day of June, A. D. 1933.

Filed June 26, 1933

Petition of Debtor Respecting Certain Maturing Obligations.

And now comes the Debtor, The Chicago, Rock Island and Pacific Railway Company, and respectfully asks the Court for instructions with respect to the payment of the following principal and interest obligations, due as set forth below:

1. As set forth in the Petition filed herein June 7, 1933, the following principal and interest obligations of the Debtor will mature as indicated:

June 27—	
Semi-annual interest, at 5½% per annum, on loan of $1,500,000 from Reconstruction Finance Corporation	$ 41,239.73
June 30—	
Semi-annual interest, at 5½% per annum, on loan of $2,000,000 from Reconstruction Finance Corporation	54,904.12

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Petition of Debtor Respecting Certain Maturing Obligations.

(By their terms, the notes evidencing these loans bear 6% interest, but the Reconstruction Finance Corporation has granted a concession to 5½% for the current semi-annual period.)	
July 1—	
Semi-annual interest on $61,581,000 of the Debtor's General Mortgage 4% Bonds, due January 1, 1988	1,231,620.00
Semi-annual interest on $3,524,000 Choctaw & Memphis 5% First Mortgage Bonds, due January 1, 1949	88,100.00
Semi-annual interest on $453,600 of Little Rock & Hot Springs Western Notes, due July 1, 1939, of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor	9,072.00
Semi-annual interest on the Debtor's Equipment Trust Certificates, Series O	147,375.00
Annual instalment of principal of Debtor's Equipment Trust, Series O	655,000.00
July 15—	
Semi-annual interest on Debtor's Equipment Trust Certificates, Series I, Director General's Equipment Trust No. 25	32,400.00
Total	$2,259,710.85

2. The Debtor estimates that as of the close of business June 30, 1933, it will have cash available for said payments in the sum of $975,000.

3. The Debtor recommends to the Court that it be authorized to pay on their due dates the following obligations:

(a) *Interest on the loans from the Reconstruction Finance Corporation.*

The Debtor's total indebtedness to the Reconstruction Finance Corporation is $13,718,700, evidenced by various notes maturing March 1, 1934. These notes are secured by

the pledge of the following treasury securities of the Debtor:

First and Refunding 4% Gold Bonds	$ 7,575,000.00
St. Paul and Kansas City Short Line 4½% Gold Bonds	9,374,500.00
Rock Island, Arkansas and Louisiana 4½% Gold Bonds	3,862,000.00
Total	$20,811,500.00
Miscellaneous securities, par value	19,490,965.85
Total	$40,302,465.85

These miscellaneous securities are not listed securities, but are bonds of subsidiary companies comprising parts of the Debtor's system of railways, for the most part issued to the Debtor at par, in return for advances for construction and for additions and betterments to their respective properties. Petitioner is of the opinion that the collateral securing the said loans from the Reconstruction Finance Corporation is substantially in excess of the amount of the loans. A default in the payment of interest on the said loans will, under the terms of the notes given to evidence the same, authorize the Reconstruction Finance Corporation to declare due and demand the payment of the principal thereof, and, in the event of non-payment of said principal, to sell and dispose of the collateral securing the said notes.

Petitioner further shows to the Court that it is indebted to various banks in the amounts shown below: all of said indebtedness being evidenced by notes due March 1, 1934, secured by the collateral indicated:

		Amount of Loan
1. Chase National Bank, New York		$2,000,000
Collateral—		
First and Refunding 4% Gold Bonds	$3,253,000	
St. Paul and Kansas City Short Line 4½% Gold Bonds	3,956,000	
	$7,209,000	

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2. Continental Illinois Bank and Trust Company, Chicago			1,250,000
Collateral—			
First and Refunding 4% Gold Bonds	$1,307,000		
St. Paul and Kansas City Short Line 4½% Gold Bonds	2,758,000		
	$4,065,000		
3. New York Trust Company, New York			500,000
Collateral—			
First and Refunding 4% Gold Bonds	$ 800,000		
St. Paul and Kansas City Short Line 4½% Gold Bonds	1,010,000		
	$1,810,000		
4. Harris Trust and Savings Bank, Chicago			250,000
Collateral—			
First and Refunding 4% Gold Bonds	$ 405,000		
St. Paul and Kansas City Short Line 4½% Gold Bonds	490,000		
	$ 895,000		
5. Mississippi Valley Trust Company, St. Louis			125,000
Collateral—			
First and Refunding 4% Gold Bonds	$ 190,000		
St. Paul and Kansas City Short Line 4½% Gold Bonds	240,000		
	$ 430,000		
Total Bank Loans			$4,125,000

The interest on the said loans, which is at the rate of 6% per annum, is payable semi-annually on the first day of February and the first day of August in each year.

All of said loans were made with the sanction of the Interstate Commerce Commission, in Finance Docket No. 9384, and, by agreement of August 1, 1932, between the

Petition of Debtor Respecting Certain Maturing Obligations.

Petitioner, the Reconstruction Finance Corporation and the said banks, a default in the payment of the interest on the Reconstruction Finance Corporation loans will amount to a default in the terms of the notes evidencing said bank loans, and will thereupon authorize the said banks to declare due and demand payment of the principal of their loans; and, if not paid, to sell and dispose of the collateral securing the same. Petitioner, therefore, recommends the payment of the interest due June 27 and June 30, as set forth above, on the Reconstruction Finance Corporation loans.

(b) *Semi-annual interest amounting to $88,100 on $3,524,000 Choctaw & Memphis First Mortgage 5% Gold Bonds, due January 1, 1949.*

These bonds are a first lien on 280 miles of railway in Arkansas and on certain terminals in Memphis, Tennessee, at the rate of $12,585 per mile of road. The mileage involved is very important to the Debtor's system, being its main line west from Memphis, Tennessee, through Arkansas, and forming part of the Debtor's main line to Tucumcari, New Mexico.

(c) *Semi-annual interest amounting to $9,072 on $453,600 of Little Rock & Hot Springs Western Notes, due July 1, 1939, of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor.*

These notes are purchase money notes given for the purchase of 21.99 miles of main line railroad extending from Little Rock, Arkansas, to Benton, Arkansas. The mileage comprises part of the Debtor's main line from Little Rock to Eldorado, Arkansas, and Eunice, Louisiana, and from Little Rock to Hot Springs, Arkansas.

(d) *Equipment Trust obligations, as set forth above.*

The Series O Equipment Trust was formed in 1927, for the purchase of equipment, consisting of 50 locomotives, 5 motor cars, 78 passenger cars and 2,500 freight cars, costing $11,406,745.49. It comprises an issue of $8,515,000 of 4½% Equipment Trust Certificates, dated July 1, 1927, maturing at the rate of $655,000 on July 1 of each year from 1930 to 1942, inclusive, the interest being payable semi-annually on January 1 and July 1. $1,965,000 of these certificates have been redeemed and cancelled, and $6,550,000, of which the instalment due July 1 next forms part, are outstanding in the hands of the public.

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Petition of Debtor Respecting Certain Maturing Obligations.

Under the terms of the Equipment Trust Agreement, e Chase National Bank of New York, as Trustee, holds e to the equipment, and the Debtor operates the same ler lease, having agreed to pay as rental the maturing ncipal and interest payments. Upon default in the yment of the said rental, the Trustee will be entitled declare due and demand payment of all the outstand- certificates, and to take possession of and dispose the equipment. All of the said equipment is impor- t in the operation of the Debtor's system of railways. The Series I Equipment Trust, Director General's No. of which the Guaranty Trust Company of New York Trustee, was formed for the purpose of paying for 00 box cars and 30 locomotives purchased by the Di- tor General and assigned to the Debtor during Fed- l Control. $8,117,250 of 6% Equipment Trust Notes re issued January 15, 1920, payable at the rate of 40,000 on January 15 of each year to January 15, 1935, d bearing interest at 6% per annum, payable Janu- 15 and July 15 in each year. $1,080,000 of the said ries I Notes are now outstanding. A default in the yment of the interest due July 15 will constitute a fault in the terms of the Equipment Trust Agreement, d authorize the Trustee to declare due the principal the outstanding notes and to demand payment thereof; d, in default of such payment, to retake the equipment, ich is now in use on the Debtor's system of railways.

4. The Debtor has not sufficient funds at this time pay the interest due July 1 on its General Mortgage Gold Bonds. These bonds are an underlying lien on e most important part of the Debtor's system. The ount outstanding in the hands of the public is $61,581,000, d constitutes a first lien on 3,130 miles of railroad, at e rate of $19,674 per mile. Under the terms of the Gen- l Mortgage of January 1, 1898, securing the said bonds, which said mortgage Bankers Trust Company of New rk and H. F. Wilson are now Trustees, a period of six nths' grace is allowed for the payment of interest before e Trustees, under the terms of the said mortgage, can clare due the principal of the outstanding bonds, or pur- e the other remedies set forth in the said mortgage in the se of default. The Debtor expects that long prior to the piration of the said period of default it will have in its

hands funds derived from the operation of its properties sufficient to pay the July 1 instalment of interest on all of the outstanding General Mortgage Bonds, and will promptly upon the acquisition of such funds ask authority of the Court to pay the said interest.

WHEREFORE, The Debtor prays authority from the funds now in its hands to make the principal and interest payments specified in paragraph 3 of this petition, and temporarily to defer payment of interest due July 1, 1933, on its General Mortgage 4% Gold Bonds.

Respectfully submitted,
THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,
By J. E. GORMAN,
President.

MARCUS L. BELL,
25 Broad Street,
New York.
W. F. DICKINSON,
W. F. PETER,
1025 LaSalle Street Station,
Chicago, Ill.
Attorneys for Debtor.

And on the same day, to wit, the 26th day of June, A. D. 1933, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Entered June 26, 1933

Order Respecting Certain Maturing Obligations.

Certain obligations maturing June 27, June 30, July 1 and July 15, and the Court having heard the statements of Counsel, and being fully advised in the premises, it is ORDERED:

That the Debtor be and it hereby is authorized to pay the following obligations as they mature:

June 27—

Semi-annual interest on loan of $1,500,000 from Reconstruction Finance Corporation	$ 41,239.73

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June 30—	
Semi-annual interest on loan of $2,000,000 from Reconstruction Finance Corporation	54,904.12
July 1—	
Semi-annual interest on $3,524,000 Choctaw & Memphis 5% First Mortgage Bonds, due January 1, 1949	88,100.00
Semi-annual interest on $453,600 Little Rock & Hot Springs Western Notes of Rock Island, Arkansas and Louisiana Railroad Company, guaranteed by the Debtor	9,072.00
Semi-annual interest on the Debtor's Equipment Trust Certificates, Series O	147,375.00
Annual instalment of principal of the Debtor's Equipment Trust, Series O	655,000.00
July 15—	
Semi-annual interest on Debtor's Equipment Trust Certificates, Series I, Director General's Equipment Trust No. 25	32,400.00

IT IS FURTHER ORDERED:

That the Debtor be and it hereby is authorized temporarily to defer the payment of the interest due July 1 on $61,581,000 General Mortgage 4% Gold Bonds, amounting to $1,231,620; and the Debtor is further authorized and directed to pay the said interest when and as funds are available from the earnings of the trust estate:

Signed:

JAMES H. WILKERSON,
Judge.

Dated June 26, 1933.

Order Permitting Intervention of Bondholders' Committees.

And afterwards, to wit, on the 28th day of December, A. D. 1933, being one of the days of the regular December term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Entered December 28, 1933

Order Permitting Intervention of Bondholders' Committees.

This cause this day duly came on to be heard on the petitions of

1. Leon O. Fisher, Robert Dechert, Stacy B. Lloyd, James Lee Loomis and Robert H. Stenhouse, and their successors, as the Protective Committee for The Chicago, Rock Island and Pacific Railway Company's General Mortgage 4% Bonds, due January 1, 1988;

2. Alfred H. Meyers, Milo W. Wilder, Jr., Stering Pierson, Fred P. Hayward, Howard Greene, William J. Lum and Edwin S. Hunt, and their successors, as the Protective Committee for the Burlington, Cedar Rapids & Northern Railway Company's Consolidated First Mortgage 5% Bonds, due April 1, 1934;

3. Dwight S. Beebe, Merrel P. Callaway, Harry C. Hagerty, DeWitt Millhauser, John W. Stedman, Harold Stone, and Frederick W. Walker, and their successors, as the Protective Committee for The Chicago, Rock Island and Pacific Railway Company's First and Refunding Mortgage 4% Gold Bonds, due April 1, 1934, and Secured 4½% Gold Bonds, Series A, due September 1, 1952;

4. Ralph Wolf, Pierpont V. Davis, A. F. Lafrentz, George N. Lindsay and Steele Mitchell, and their successors, as the Protective Committee for The Chicago, Rock Island and Pacific Railway Company's Thirty-Year 4½% Convertible Gold Bonds, due May 1, 1960;

5. John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, and their successors, as the Protective Committee for The Choctaw, Oklahoma and Gulf Railroad Company's Con-

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solidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company's First Mortgage 5% Gold Bonds, due January 1, 1949; and

6. James G. Blaine, Frank M. Gordon, William V. Griffin, R. G. Page and James R. Trowbridge, and their successors, as the Protective Committee for St. Paul and Kansas City Short Line Railroad Company's First Mortgage 4½% Gold Bonds and Rock Island, Arkansas and Louisiana Railroad Company's First Mortgage 4½% Gold Bonds,

for leave to intervene generally herein, and for good cause shown, the Court being fully advised in the premises, and no one opposing, finds that the prayers of said petitioners should be granted; it is therefore,

ORDERED,

That said several Committee petitioners are hereby given leave to intervene and are each, and their several successors, hereby admitted and constituted as general parties to this cause, with the right to receive notice, to file motions, pleadings and other papers, to be heard by testimony and/or by argument, and to take such other steps and proceedings in this cause as they may deem proper; provided, however, that the Court reserves the right to enter orders pursuant to petitions or motions of the Trustees herein without notice thereof to any other party or parties, where, in the judgment of the Court, such notice is not necessary to protect the interests of any such party not served with notice.

Enter:

JAMES H. WILKERSON,
Judge.

Dated December 28, 1933.

And afterwards on, to wit, the 30th day of January, A. D. 1934, came John C. Traphagen *et al.* by their attorneys and filed in the Clerk's office of said Court a certain Petition of the Protective Committee for the Holders of Choctaw, Oklahoma & Gulf Railroad Co. etc. in words and figures following, to wit:

Filed January 30, 1934

Petition of the Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952 and of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds Due January 1, 1949 for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due November 1, 1933 on the Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and the Interest Due January 1, 1934 on the Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds Due January 1, 1949.

To the Honorable the Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

The petition of John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952 and of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, respectfully shows, upon information and belief, that:

1. Under date of January 2, 1899, the Choctaw and Memphis Railroad Company (hereinafter called the "C & M") duly executed and delivered to the Girard Life Insurance, Annuity and Trust Company of Philadelphia (a corporation created by and existing under the laws of the Commonwealth of Pennsylvania), as Trustee, an Indenture (hereinafter called the "C & M Indenture") authorizing the issuance of bonds of the C & M in the aggregate principal amount of $3,750,000 to be known as First Mortgage Gold Bonds of said Company, bearing interest at the rate of 5% per annum and payable January 1, 1949, unless the maturity thereof should be accelerated pursuant to the terms of said Indenture.

2. In accordance with the provisions of said C & M Indenture, there were duly made, issued and sold, and there are now outstanding in the hands of the public

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$3,524,000 aggregate principal amount of said First Mortgage 5% Gold Bonds of the C & M (hereinafter called the "C & M Bonds"), and, in addition, $1,000 principal amount of the C & M Bonds were issued and are now owned and held in the Treasury of The Chicago, Rock Island and Pacific Railway Company (hereinafter called the "Debtor Pacific Company").

3. The C & M Bonds are secured by (among other liens) a first lien on 280.49 miles of railroad from a point on the west bank of the Mississippi, opposite Memphis, to the Arkansas-Oklahoma line; also on certain property in Memphis.

4. On June 30, 1900, the C & M sold subject to the lien of said C & M Indenture all of its property to the Choctaw, Oklahoma and Gulf Railroad Company (hereinafter called the "Debtor C. O. & G."), in consideration of, among other things, the agreement and undertaking of the Debtor C. O. & G. to assume and pay the series of First Mortgage 5% Fifty-Year Gold Bonds issued or that might thereafter be certified and issued under the terms and provisions of the C & M Indenture.

5. Subsequent to the sale of all its property to the Debtor C. O. & G., the C & M was dissolved and its unmortgaged assets distributed to its stockholders.

6. Under date of May 1, 1902, the Debtor, C. O. & G. duly executed and delivered to the Girard Trust Company (a corporation created by and existing under the laws of the Commonwealth of Pennsylvania), as Trustee, an Indenture (hereinafter called the "C. O. & G. Indenture") authorizing the issuance of Consolidated Mortgage Gold Bonds (hereinafter called the "C. O. & G. Bonds") of the Debtor C. O. & G. in an aggregate principal amount limited, among other things, to a specified sum per mile of completed railroad subject to said Indenture, bearing interest at the rate of 5% per annum, payable May 1, 1952, unless the maturity thereof should be accelerated pursuant to the terms of said C. O. & G. Indenture.

7. In accordance with the provisions of said C. O. & G. Indenture, the Debtor C. O. & G. duly made, issued and sold and there are now outstanding in the hands of the public $5,411,000 aggregate principal amount of said C. O. & G. Bonds.

8. Also in accordance with the provisions of said C. O. & G. Indenture, the Debtor C. O. & G. duly made and

issued $5,500,000 aggregate principal amount of additional C. O. & G. Bonds, which bonds were deposited with the Trustee of the First and Refunding Gold Bond Mortgage of the Debtor Pacific Company and which bonds are still on deposit with said Trustee.

9. The C. O. & G. Bonds are secured by (among other things) a first lien on 662.55 miles of railroad, including a line from the Arkansas-Oklahoma State line to the Oklahoma-Texas State line (which line passes through Oklahoma City), and certain other lines both in Oklahoma and Arkansas, as well as a second lien on the railroads and properties covered by the C & M Bonds.

10. Under date of March 24, 1904, the Debtor C. O. & G. and the Debtor Pacific Company executed a certain lease pursuant to which the Debtor C. O. & G. leased to the Debtor Pacific Company the properties securing both the C & M and the C. O. & G. Bonds, in consideration of, among other things, the covenants by the Debtor Pacific Company contained in Article Third of said lease, to pay by way of rental among other things:

> "(c) all rentals or other compensations due or owing by the lessor under or by virtue of the provisions of any lease, trackage arrangement or operating contract under and by virtue of which the lessor has the right to use the railway, or any part thereof, of any other railway company;
>
> (d) an amount equal to the interest accruing on the said $5,500,000 five per cent. General Mortgage bonds of the lessor, the said $3,525,000 five per cent. bonds of Choctaw and Memphis Railroad Company, the said $355,000 six per cent. bonds of Little Rock Bridge Company, the $5,411,000 Consolidated Mortgage five per cent. bonds of the lessor and all of such Consolidated Mortgage bonds hereafter issued by the lessor at the request or with the consent of the lessee; such payments to be made by payment of said interest as it accrues to the holders of said bonds in accordance with the terms thereof and of the mortgages or deeds of trust securing the same;"

11. Under date of October 24, 1933, the Debtor C. O. & G., together with certain other subsidiaries of the Debtor Pacific Company, filed a petition herein, pursuant

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to Section 77 of Chapter VIII of the Acts of Congress relating to bankruptcy, and on the same date on said petition an order herein was entered (order No. 25) approving said petition as properly filed under Section 77.

12. On October 30, 1933, at the instance and request of the holders of large amounts of both the C. O. & G. Bonds and the C & M Bonds, your Petitioners were organized as a Protective Committee for such of the holders of such bonds outstanding in the hands of the public as might desire to be represented by said Committee, and at the time of such organization John C. Traphagen was duly appointed Chairman of the Committee, and S. L. deVausney was duly appointed Secretary of the Committee. Under date of December 28, 1933, this Court entered an order (order No. 38), pursuant to which your Petitioners were allowed to intervene generally herein as parties in this proceeding.

13. In said order entered herein under date of October 24, 1933 (order No. 25) this Court ordered (at page 266):

> "3. That the said Debtors, respectively, shall close their books of account as of the close of business October 31, 1933, and shall open new books of account as of the opening of business on the following day, and cause to be kept therein due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtors, and shall preserve proper vouchers for all payments made on account thereof, and shall deposit the moneys coming into their hands in such of the banks in which funds of the Debtors are presently deposited as shall be selected by the respective Debtors, or in such other bank or banks as shall be selected by them and approved by this Court."

14. Under date of November 22, 1933, pursuant to order of this Court (order No. 21), Frank O. Lowden, James E. Gorman and Joseph B. Fleming were temporarily appointed Trustees of the Debtor Pacific Company and of the Debtor C. O. & G.

15. Under date of December 28, 1933 an order was entered by this Court (order No. 32) making permanent the appointment of Frank O. Lowden, James E. Gor-

man and Joseph B. Fleming, as Trustees of the Debtor Pacific Company and of the Debtor C. O. & G. herein.

16. Your Petitioners believe and respectfully show to this Court that by virtue of the fact that said Frank O. Lowden, James E. Gorman and Joseph B. Fleming are Trustees of the Debtor C. O. & G. pursuant to the order of this Court, said Frank O. Lowden, James E. Gorman and Joseph B. Fleming owe a duty to the creditors of the Debtor C. O. & G. (separate and distinct from their duties or obligations as Trustees of the Debtor Pacific Company) to protect the interests of the creditors of the Debtor C. O. & G. and to endeavor to obtain the performance by the Debtor Pacific Company of its obligations to the Debtor C. O. & G. under the terms of the lease mentioned in paragraph 10 of this petition; and your Petitioners further respectfully show to this Court that, in the event said Frank O. Lowden, James E. Gorman and Joseph B. Fleming as Trustees of the Debtor C. O. & G., cannot for any reason obtain at this time the performance by the Debtor Pacific Company of its obligations under said lease, nevertheless such Trustees owe a duty to obtain for the account of the holders of the C. O. & G. Bonds and the holders of the C & M Bonds (which constitute the only secured obligations of the Debtor C. O. & G.) the earnings properly attributable to the Debtor C. O. & G., and to account for and pay over as interest the amount of such earnings to the holders of the C. O. & G. Bonds and the holders of the C & M Bonds.

17. In respect of the failure of Debtor Pacific Company to fulfill the obligations of the lease mentioned in paragraph 10 hereof, the Debtor C. O. & G. after a period of three months may take proceedings to terminate the lease pursuant to the terms thereof. Your petitioners have been informed of no action taken by the Trustees of the Debtor C. O. & G. to require the Debtor Pacific Company (or themselves as Trustees) to fulfill the obligations contained in said lease and your Petitioners believe that no demand has been made by said Trustees of the Debtor C. O. & G. on the Debtor Pacific Company that such obligations be fulfilled and that said Trustees of the Debtor C. O. & G. have not asked this Court for an order directing the Debtor Pacific Company to fulfill such obligations.

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Petition of the Protective Committee.

18. Your Petitioners believe that the Trustees of the Debtor C. O. & G. have not yet complied with said order No. 25 above mentioned in paragraph 13 of this petition and your Petitioners have received no notice that new books of account have been opened as of the opening of business on November 1, 1933 or that there have been caused to be kept in any books due and proper accounts of the earnings, expenses, receipts and disbursements of the Debtor C. O. & G. subsequent to November 1, 1933, or that proper vouchers for all payments made on account of the Debtor C. O. & G. have been preserved, or that moneys coming into the hands of the Trustees of the Debtor C. O. & G. have been deposited to the separate account of the Debtor C. O. & G. in any bank or banks.

19. On November 1, 1933, an instalment of interest on the C O. & G. Bonds became due and payable, but pursuant to order of this Court (order No. 27) authorizing the Debtor Pacific Company to defer payment of said instalment, the Debtor Pacific Company and the Debtor C. O. & G. did not pay said instalment of interest or any part thereof, and said interest remains wholly unpaid.

20. On January 1, 1934, an instalment of interest on the C & M Bonds became due and payable, but pursuant to order of this Court (order No. 34) authorizing the Debtor Pacific Company to defer payment of said instalment, the Debtor Pacific Company and the Debtor C. O. & G. did not pay said instalment of interest or any part thereof, and said interest remains wholly unpaid.

21. Pursuant to both the C. O. & G. and C & M Indentures, after a failure to pay interest has continued for the period of three months the Trustee may accelerate the principal amount due under the Indenture.

22. In respect of the failure of the Debtor C. O. & G. to pay the interest due November 1, 1933 on the C. O. & G. Bonds under the aforementioned terms of the C. O. & G. Indenture, at any time after January 31, 1934 the Trustee, upon the request of one-third in interest of the bondholders, is required to declare the principal amount of said issue due, which principal amount aggregates $10,911,000. In respect of the failure of the Debtor C. O. & G. to pay the interest due January 1, 1934 on the C & M Bonds under the aforementioned terms of the C & M Indenture, at any time after March 31, 1934 the Trustee, upon the request of one-third in interest of the bondholders, is required to

declare the principal amount of said issue due, which pri
cipal amount aggregates $3,524,000.

23. Under date of December 28, 1933 this Court e
tered an order (order No. 33) directing the payment
interest due on July 1, 1933 on the General Mortgage Bon
of the Debtor Pacific Company.

24. Your Petitioners have been furnished with a te
tative statement headed "Income Account by Mortgag
Lines month of June, 1933", (which your Petitioners ref
to but do not adopt as their own) showing during the mon
of June, 1933, the lines leased to the Debtor Pacific Co
pany by the Debtor C. O. & G. earned $156,440 agair
interest charges for one month on the C. O. & G. and t
C & M Bonds aggregating $60,145.83, a margin of abo
2.6 times the interest charges thereon.

25. Your Petitioners believe from studies of availal
statistics that the earnings of the lines leased by the Debt
C. O. & G. to the Debtor Pacific Company have more th
covered the interest due November 1, 1933 on the C. O. &
Bonds and the C & M Bonds and your Petitioners furth
believe that records available to the Debtor Pacific Co
pany will show to the satisfaction of this Court that:

A. The lines of railroad leased by the Debt
C. O. & G. to the Debtor Pacific Company affo
access to important petroleum-producing areas
the State of Oklahoma.

B. Traffic in crude petroleum and refined pet
leum oils and other gasolines bears a relatively hi
freight tariff rate.

C. The lines of railroad leased by the Debt
C. O. & G. to the Debtor Pacific Company origina
and transport an important tonnage of petrole
oils and products of manufacturers and the Debt
Pacific Company receives a higher average reven
per ton mile on such freight traffic than the Debt
Pacific Company receives from freight traffic on t
other lines of railroad owned in fee or leased by t
Debtor Pacific Company.

D. The ton-miles of freight per dollar of fund
debt outstanding secured by the liens on the lin
leased by the Debtor C. O. & G. are and have be
greater than the ton-miles of freight per dollar
funded debt outstanding secured by the lien of t

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General Mortgage or secured by the lien of any other mortgage of the Debtor Pacific Company, and earnings on a per-mile basis are more than sufficient to service the C. O. & G. and the C & M Bonds.

WHEREFORE, your Petitioners pray that an order be granted herein

(1) directing the Trustees of the Debtors herein to pay the interest due November 1, 1933 on the Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and the interest due January 1, 1934 on the Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, and

(2) directing that Frank O. Lowden, James E. Gorman and Joseph B. Fleming, as Trustees of the Debtor C. O. & G. herein, comply with paragraph marked "3" of the order entered herein under date of October 24, 1933 (order No. 25, at p. 266) and segregate and deposit the earnings of the Debtor C. O. & G. in such banks as may be selected by the Trustees with the approval of this Court in accounts separate from those of the other debtors herein, and

(3) directing that the Trustees of the Debtor C. O. & G. take appropriate steps to enforce the obligations of the Debtor Pacific Company to the Debtor C. O. & G. pursuant to the terms of the lease dated March 24, 1904, and

(4) for such other and further relief as may be deemed just and proper in the premises.

Dated, New York, January 26, 1934.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, acting pursuant to written authority given them by the above-mentioned holders of said bonds.

By JOHN C. TRAPHAGEN
Chairman.

Sequestration Order.

COTTON, FRANKLIN, WRIGHT & GORDON,
Attorneys for Petitioners,
No. 63 Wall Street,
New York, N. Y.

[Verification omitted in printing.]

And afterwards, to wit, on the 2nd day of May, A. D. 1934, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered May 2, 1934

Sequestration Order.

This cause having duly come on to be heard on the 17th day of April, 1934, upon so much only of the Intervening Petition verified January 18, 1934 and filed March 6, 1934 of Bankers Trust Company and Bethune W. Jones, as Trustees under the General Gold Bond Mortgage, dated January 1, 1898, of The Chicago, Rock Island and Pacific Railway Company, as prayed for sequestration and segregation of the net income derived from property covered by the lien of said Mortgage, and for sequestration and segregation of the net income derived from property covered by the lien of the First Mortgage, dated January 1, 1893, of The Chicago, Rock Island and Texas Railway Company, and having been argued by counsel; and counsel for the Committees for the Burlington, Cedar Rapids and Northern Consolidated Bonds, The Chicago, Rock Island and Pacific Railway Company First and Refunding and Secured 4½% Bonds, the Choctaw and Memphis First Mortgage Bonds, the Choctaw, Oklahoma and Gulf Consolidated Mortgage Bonds, the St. Paul and Kansas City Short Line First Mortgage Bonds and the Rock Island, Arkansas & Louisiana First Mortgage Bonds having requested in open Court that an order be entered as hereinafter provided,

Now, on said petition of said Mortgage Trustees and upon said motion of said Committees, and after due deliberation, the Court being fully advised in the premises, it is hereby

ORDERED AND DETERMINED:

1. That Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Debtors herein, are

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directed to keep records and accounts showing separately the tolls, earnings, incomes, rents, issues and profits, which have heretofore or may hereafter come into the possession of said Trustees or which came into the possession of any of the Debtors on or after June 1, 1933, and which have been or may hereafter be derived from any of the properties in the respective estates herein which are covered by any mortgage or mortgages; such records and accounts shall be kept in accordance with a formula for the determination and allocation of such tolls, earnings, incomes, rents, issues and profits; such formula shall reflect the respective interests of the mortgages in such tolls, earnings, incomes, rents, issues and profits, and shall not become effective in this proceeding unless and until approved by the Court after notice to all parties who shall have intervened herein and to all of the Trustees of the mortgages, and until any appeal or review affecting the same shall have been concluded;

2. That no Trustee of a mortgage shall be required to make any further demand or application for the enforcement in this proceeding of any lien or right in respect of any of the tolls, earnings, incomes, rents, issues and profits of the property covered by the mortgage (including the tolls, earnings, incomes, rents, issues and profits of any mortgage bonds covered by the lien of the mortgage); but the rights of each Mortgage Trustee shall be determined as if due demand or application had been made by such Trustee (and by the Trustee of any mortgage bonds covered by the lien of the mortgage) at the earliest date or dates when any such Trustee would have been entitled to make such demand or application under the terms of the mortgage of which it is Trustee; provided, however, that, such date shall not be earlier than April 1, 1934, except that in the case of Bankers Trust Company and Bethune W. Jones, as Trustees of The Chicago, Rock Island and Pacific Railway Company General Gold Bond Mortgage dated January 1, 1898, they shall be deemed to have made such application on January 18, 1934; and

3. That the respective Trustees of the mortgages shall be entitled to apply at the conclusion of this proceeding, or at such earlier time or times as they may respectively deem proper, upon due notice to all parties of record, for the enforcement of their liens upon, or rights in, the tolls,

earnings, incomes, rents, issues and profits in which they may have any interest, and of their liens upon, or rights in, any of the proceeds thereof, and for an equitable adjustment, as between those interested in this proceeding, with respect to any use which may have been made of any of the same; but nothing in this order shall be construed as determining the merits of any such application or as requiring the Trustees to pay over or earmark any of the same pending the further order of the Court.

4. That all other issues raised by the petition of the Trustees under the General Mortgage and the answers thereto are hereby reserved; and

5. This order shall not be deemed to be a determination of the necessity for the making of any demand or application herein mentioned and, except as expressly provided herein, is without prejudice to any of the rights of the Trustees of the mortgages or of any other party hereto in respect of any tolls, earnings, incomes, rents, issues and profits or any of the proceeds thereof.

ENTER:

BARNES,
Judge.

May 2, 1934.

And afterwards on, to wit, the 22nd day of June, A. D. 1934, came John C. Traphagen *et al.* by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Filed June 22, 1934

Answer of John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds to Petition of Trustees Respecting Interest Due January 1, 1934, on General Mortgage 4% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for

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the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, for their answer to the petition of the Trustees respecting interest due January 1, 1934, on General Mortgage 4% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company (herein called Debtor Pacific Company), respectfully show, upon information and belief, that:

1. Said Committee denies each and every allegation contained in paragraph 1 of said petition, except that it admits that the interest due January 1, 1934, on the General Mortgage 4% Bonds of Debtor Pacific Company has not been paid and that the default period provided in the mortgage securing said Bonds for the payment of said interest will expire July 1, 1934.

2. Said Committee denies each and every allegation contained in paragraph 3 of said petition except in so far as otherwise expressly admitted in this paragraph 2 and in paragraphs 3 and 4 of this answer. Said Committee is informed and believes that the expression "the Trustees" as used in paragraph 3 of said petition is intended as a reference to Frank O. Lowden, James E. Gorman and Joseph B. Fleming in their respective capacities as Trustees of all of the several Debtors who are parties to these proceedings, and that the term "the Trust Estate" as used in paragraph 3 of said petition is intended as a reference to all of the respective estates which are in the hands of said Trustees in their said several capacities. The Trustees in no capacity have reasonable grounds for the belief or expectation that in their capacity as Trustees of Debtor Pacific Company they will have in hand on or before July 1, 1934, derived from the operation of the trust estate of Debtor Pacific Company as distinguished from the trust estates of the other Debtors who are parties to these proceedings, funds amounting to $3,500,000 or any amount approximating that amount, although it is admitted they may in their several capacities, derived from all of the respective estates and the operation thereof, then have in hand a sum aggregating $3,500,000. Irrespective of whether such amount of $3,500,000 on or before July 1, 1934 be in the hands of the Trustees in their capacity as Trustees of Debtor Pacific Company or in the aggregate in their several capacities as Trustees of the several Debtors, the Trus-

tees on said date will not have in their hands funds sufficient to make payment of the interest prayed for in said petition and leave a working fund reasonably adequate to protect the immediate other necessary expenditures of the trust estate of Debtor Pacific Company and *a fortiori* of the other Debtors, parties to these proceedings.

Further Answering Said Petition, Said Committee Says, Upon Information and Belief, That:

3. Frank O. Lowden, James E. Gorman and Joseph B. Fleming are Trustees, in separate and distinct capacities, of each of the several Debtors, parties to these proceedings. Funds which have heretofore come into the hands of said Trustees and are now held by them, have been held, and funds which will come into their hands and be held by them, unless otherwise directed by this Court, will be held, in one or more accounts in their names as Trustees of Debtor Pacific Company alone, and that at all times said Trustees have, and will, unless otherwise directed by this Court, treat said funds, so commingled, as funds to be disbursed by them in their capacity as Trustees of Debtor Pacific Company, with utter disregard of the other capacities in which the same have been or will be received and are or will be held. Such procedure on the part of the Trustees is to the great detriment of the estates of the Debtors other than Debtor Pacific Company. Particularly is it to the detriment of the estate of Debtor Choctaw, Oklahoma and Gulf Railroad Company (herein referred to as Debtor C. O. & G.) and to its creditors, including holders of Bonds represented by said Committee, in that a very substantial portion of said funds so commingled as aforesaid constitute the property of the Trustees in their capacity as Trustees of Debtor C. O. & G. in which no other Debtor has any interest. Said latter funds have been dealt with by the Trustees without regard to the separate and distinct rights of Debtor C. O. & G. and the creditors thereof and the trusts imposed upon the Trustees as Trustees of Debtor C. O. & G. The only obligor on the General Mortgage 4% Bonds of Debtor Pacific Company is said Debtor Pacific Company; the mortgage securing said Bonds constitutes a lien on no property whatsoever of Debtor C. O. & G.; and no advantage will be gained, but that on the contrary, serious and material damage will be suffered by Debtor C. O. & G. and the creditors thereof, including the holders of Bonds represented by said Committee,

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if the interest is paid as prayed for in said petition out of said commingled funds. Of the commingled funds now held by the Trustees in their several capacities, between $1,250,000 and $1,500,000 at least are funds which are the property of Debtor C. O. & G. or the Trustees thereof and not subject to being used be the Trustees in their capacity as Trustees of Debtor Pacific Company for the payment of interest on General Mortgage 4% Bonds of Debtor Pacific Company or of any other obligation of that Company (other than its obligations under the lease with Debtor C. O. & G.). The Trustees, in no capacity, have the right to appropriate the funds of Debtor C. O. & G. to the payment of interest on any obligation of Debtor Pacific Company or of any other Debtor without the consent of the creditors of Debtor C. O. & G., including the holders of Bonds represented by said Committee. No payments out of said commingled funds held as aforesaid by the Trustees lawfully can or should be made, unless for current operating expenses required to be made in the interest of the public, until the property rights of the various Debtors in said commingled funds shall have been determined and adequately protected.

4. Irrespective of the source and title to the funds held by the Trustees in their several capacities, and even assuming that the Trustees in their capacity as Trustees of Debtor Pacific Company may have in hand on July 1, 1934, belonging to the estate of Debtor Pacific Company alone, amounts aggregating $3,500,000, it is not in the best interests of that estate or the creditors thereof generally, or the estates generally of the other Debtors, party to these proceedings, particularly the estate of Debtor C. O. & G. and its creditors, to use any portion of said funds for the payment of interest on the General Mortgage 4% Bonds of Debtor Pacific Company. For the period from July 1, 1933, to January 1, 1934, the period for which said petition prays the payment of interest, the earnings attributable to the General Mortgage 4% Bonds of Debtor Pacific Company, in accordance with the formula presented by the Trustees, is an amount of approximately $1,567,800 as against the amount of interest proposed to be paid for that period of approximately $2,039,000—a deficiency in earnings of approximately $471,200. Repairs, maintenance and replacements upon the several lines of railroad and equipment constituting the unified railroad system operated by Debtor Pacific Company and the Trustees for

some time past have been, and are now, far below normal. From the standpoint of the best interests and *necessities* of both the public and of all parties involved in these proceedings, very substantial sums must be expended immediately for repairs, maintenance and replacement, and such funds cannot be readily secured other than from accumulated income in the hands of the Trustees. Any disadvantage which might result to any of the Debtors, parties to these proceedings, or any other party, arising out of non-payment of interest as prayed for by the Trustees is entirely outweighed by disadvantages and dangers which would accrue and result to the public and to the parties from failure to make such absolutely necessary and substantial expenditures promptly for repairs, maintenance and replacement and failure to conserve funds in the hands of the Trustees.

WHEREFORE, it is respectfully prayed that the petition hereinabove referred to be dismissed, and that this Court refuse to authorize the payment of interest on the General Mortgage 4% Bonds as prayed for in said petition; and for such other and further relief as may de deemed just and proper to protect the interests of Debtor C. O. & G. and its creditors, including particularly the holders of Bonds represented by said Committee.

Dated, New York, June 21, 1934.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
As a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, acting pursuant to written authority given them by holders of the above mentioned Bonds.
By JOHN C. TRAPHAGEN,
Chairman.

COTTON, FRANKLIN, WRIGHT & GORDON,
Attorneys for said Committee,
63 Wall Street,
New York, N. Y.

[Verification omitted in printing.]

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And afterwards, to wit, on the 26th day of June, A. D. 1934, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Order Respecting Payment of Interest Due January 1, 1934, on General Mortgage 4% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company.

Entered June 16, 1934

This day coming on to be heard the petition of the Trustees respecting the payment of the interest due January 1, 1934, on the General Mortgage 4% Gold Bonds due January 1, 1934, on the General Mortgage 4% Gold Bonds due January 1, 1988, of the Debtor, The Chicago, Rock Island and Pacific Railway Company, and the Trustees appearing by Marcus L. Bell, W. F. Dickinson and W. F. Peter, their solicitors, and the following also appearing:

Edward W. Bourne, Esq., of Alexander & Green, Counsel for Protective Committee of General Mortgage 4% Gold Bonds of the Debtor,

Joseph Schreiber, Esq., of Root, Clark, Buckner & Ballantine, Counsel for Protective Committee of First and Refunding Mortgage 4% Gold Bonds and Secured 4½% Gold Bonds of the Debtor,

E. L. Williams, Esq., of Cotton, Franklin, Wright & Gordon, Counsel for the Protective Committee for the Choctaw & Memphis 5% Bonds and Choctaw, Oklahoma & Gulf Consolidated 5% Bonds,

F. H. Towner, Esq., of Winston, Strawn & Shaw, Counsel for Bankers Trust Company and Bethune W. Jones, as Trustees of the General Gold Bond Mortgage,

James A. Sprowl, Esq., of Hopkins, Starr & Godman, Counsel for Reconstruction Finance Corporation,

and the matter being submitted to the Court upon the petition of the Trustees, the answer of the Protective Committee for the Choctaw & Memphis First Mortgage Gold Bonds and Choctaw, Oklahoma & Gulf Consolidated Mortgage Gold Bonds, the affidavit of Dwight S. Beebe, Chairman of the Protective Committee for the First and Refunding 4% Gold Bonds and the Secured 4½% Gold Bonds of the Debtor, the

affidavit of Ralph Wolf, Chairman of the Protective Committee for the Convertible 4½% Gold Bonds of the Debtor, and the previous proceedings in this cause; and the Court having taken the testimony of witnesses and having heard the arguments of counsel and being fully advised in the premises,

ORDERED:

That the Trustee be, and they hereby are, authorized and directed, from the funds in their hands, to pay on or before July 1, 1934, interest due January 1, 1934, upon $99,981,000 General Mortgage 4% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company, amounting to $1,999,620; and the Trustees are further authorized and directed to pay to each holder of a coupon or claim for interest on said bonds due January 1, 1934, interest on the amount so due at the rate of four per cent per annum from January 1, 1934 to the date of said payment.

The Court reserves the right, upon application by any of the parties to these proceedings at any time during the pendency thereof, to determine upon an equitable adjustment as between all those interested in this proceeding with respect to any use which may have been made of any tolls, earnings, income, rents, issues and profits of any portion of the trust estate.

Enter:

JAMES H. WILKERSON,
Judge.

Dated June 26, 1934.

And afterwards on, to wit, the 2nd day of November, A. D. 1934, came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Filed November 2, 1934

Petition of Trustees Respecting Formula for Segregation of Earnings.

And now come the Trustees herein and respectfully show to the Court:

1. By their Petition for Order No. 51, filed herein May 23, 1934, the Trustees submitted to the Court for its approval the formula heretofore prepared for ascertaining separately the tolls, earnings, incomes, rents, issues and

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profits of the respective mortgaged lines constituting the trust estate. By its Order known as Order No. 51, entered the same day, the Court ordered said formula to be filed with the Clerk, and granted leave to any of the parties to the proceedings, or to any Trustee or Trustees of any of the mortgages secured by liens upon any portion of the trust estate, to file on or before June 30 an answer setting forth in specific form any objections to any of the provisions of the formula. By Order No. 55, entered herein June 22, 1934, the Court extended the time for filing such answers to September 1, 1934; and by Order No. 60, entered herein August 3, 1934, the Court further extended the said time to November 1, 1934.

2. In order to eliminate as far as possible all questions relating to the accuracy of the said formula, the Trustees, through their Accounting and Law Departments, have held various conferences with accounting experts employed by various parties to these proceedings; and, as a result of such conferences, certain changes have been made in said formula as proposed by the Trustees, and the Trustees now submit, for the approval of the Court, the formula as revised pursuant to these conferences, known as the "Second Revised Formula", dated August 16, 1934, copy of which is attached hereto.

3. In accordance with Paragraph 1 of the Sequestration Order No. 45-A, entered herein May 2, 1934, the Trustees have kept records and accounts showing separately the tolls, earnings, incomes, rents, issues and profits of the various mortgaged lines constituting parts of the trust estate. These records have been compiled in accordance with the Second Revised Formula, and have been obtained by applying the formula to the actual operations of the trust estate.

4. The Trustees have now completed the segregation of earnings according to the formula for each of the twelve months from June, 1933, to May, 1934, inclusive, and statements are filed in Court herewith showing separately the earnings and income of each of the mortgaged lines for each of said months. Copies of said statements have been distributed to all the parties to this proceeding.

5. The Trustees submit that there is no immediate necessity to continue the work of segregating the earnings in accordance with the formula; that the books, rec-

ords and accounts of the trust estate will be preserved, and that it will be possible from such records and accounts to determine at any time with reasonable accuracy the income and expenses of any portion of the trust estate for any period subsequent to the commencement of these proceedings on the basis of such formula as shall hereafter be approved by the Court. Petitioners further show that the expense of segregating the earnings according to the formula, as required by paragraph 1 of Order No. 45-A, referred to above, is substantial, amounting to about $7,000 per month.

Petitioners, therefore, recommend to the Court that, until the further order of the Court, they be authorized to discontinue the segregation of the earnings on the basis of the formula, as required by said Order No. 45-A, and that the time heretofore fixed by the Court for the filing of answers or objections to said formula may be extended until the further order of the Court.

Respectfully submitted,

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees.

By JAMES E. GORMAN,
One of the Trustees.

[Verification and copy of Second Revised Formula omitted in printing.]

And afterwards, to wit, on the 9th day of November, A. D. 1934, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable John P. Barnes, District Judge, appears the following entry, to wit:

Entered November 9, 1934

Order Respecting Segregation of Earnings.

On this day coming on to be heard the Petition of the Trustees respecting the formula for the segregation of earnings, and the Trustees appearing by Marcus L. Bell, W. F. Dickinson and W. F. Peter, their solicitors, and the Court having heard the statements of Counsel and being fully advised in the premises, it is

ORDERED:

1. The Second Revised Formula for the Segregation of Earnings, dated August 16, 1934 (hereinafter in these

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proceedings referred to as "the Revised Formula"), submitted by the Trustees, is ordered filed with the Clerk of this Court, in substitution for the original formula heretofore filed.

2. Until the further order of the Court, the Trustees are authorized to discontinue the segregation of earnings of the various portions of the trust estate, in accordance with the Revised Formula (or with the formula heretofore submitted) as required by paragraph 1 of the Sequestration Order entered herein May 2, 1934, known as Order No. 45A. Except as hereby modified, all other provisions of the said Order No. 45A shall be and remain in full force and effect.

3. The time heretofore fixed by Order No. 51, entered May 23, 1934, and Order No. 60, entered August 3, 1934, for filing objections to any provision or provisions in the formula is extended until the further order of the Court, and such extension is made applicable to the Revised Formula.

4. Nothing in this order contained shall imply, or be held to constitute, an approval by the Court of any of the provisions of the formula, or the Second Revised Formula, or an acceptance by any of the parties of either such formula, or any of the statements heretofore filed pursuant thereto; or to preclude any party to this proceeding from filing objections thereto in due course, or from applying to the Court for a further order directing that the segregation of the earnings be continued after May, 1934, or be restated for any period or periods during this proceeding.

Enter:

BARNES,
Judge.

And afterwards on, to wit, the 16th day of January, A. D. 1935, came John C. Traphagen, *et al.*, by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Filed January 16, 1935

Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due January 1, 1934, July 1, 1934, and January 1, 1935 on Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949.

To the Honorable Judges of the District Court of the United States, for the Northern District of Illinois, Eastern Division:

The petition of John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, respectfully shows that:

1. On October 30, 1933, at the instance and request of the holders of large amounts of both Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952 (hereinafter referred to as C. O. & G. Bonds), and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949 (hereinafter referred to as C. & M. Bonds), your petitioners were organized as a Protective Committee for the holders of C. O. & G. Bonds and C. & M. Bonds outstanding in the hands of the public. Your petitioners are now acting as such Committee under and pursuant to a certain Deposit Agreement, dated November 2, 1934, as amended on December 5, 1934. At the time of the organization of your petitioners as a Committee aforesaid, John C. Traphagen was duly appointed Chairman of said Committee, and S. L. DeVausney was duly appointed Secretary of said Committee, and said persons have at all times since acted in such capacities. On December 28, 1933, by order of this Court (Order No. 38), your petitioners were allowed to intervene generally as parties to the above entitled proceedings.

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2. Upon information and belief, under date of January 2, 1899, Choctaw and Memphis Railroad Company (hereinafter referred to as C. & M.) duly executed and delivered to Girard Life Insurance, Annuity and Trust Company of Philadelphia, as Trustee, an Indenture (hereinafter referred to as the C. & M. Indenture), authorizing the issuance thereunder of an aggregate of $3,750,000 principal amount of the C. & M. Bonds. Girard Trust Company is now Successor Trustee under the C. & M. Indenture.

3. Upon information and belief, thereafter in accordance with provisions of the C. & M. Indenture, there were duly executed, authenticated, issued and sold by C. & M., and there are now outstanding in the hands of the public $3,524,000 aggregate principal amount of the C. & M. Bonds and, in addition, $1,000 principal amount thereof were executed, authenticated and issued, and are now owned and held in the treasury of The Chicago, Rock Island and Pacific Railway Company (hereinafter referred to as the Debtor Pacific Company).

4. Upon information and belief, the C. & M. Bonds hereinabove referred to are secured by, among other things, a first lien on 280.49 miles of railroad from a point on the west bank of the Mississippi, opposite Memphis, Tennessee, to the Arkansas-Oklahoma line on certain property in Memphis, Tennessee, and on appurtenances to said line of railroad.

5. Upon information and belief, after the issuance and sale of the C. & M. Bonds as aforesaid, C. & M. sold, subject to the lien of the C. & M. Indenture, all of its property to Choctaw, Oklahoma and Gulf Railroad Company (hereinafter referred to as Debtor C. O. & G.) in consideration of, among other things, the agreement and undertaking by Debtor C. O. & G. to pay all the C. & M. Bonds theretofore issued and those that might thereafter be issued under the C. & M. Indenture.

6. Upon information and belief, subsequent to the sale of its property as aforesaid by C. & M. to Debtor C. O. & G., the Articles of Association of C. & M. were allowed to lapse.

7. Upon information and belief, under date of March 24, 1904, Debtor C. O. & G. and Debtor Pacific Company entered into a certain lease under the terms of which Debtor C. O. & G. leased to Debtor Pacific Company, for

the term of 999 years, the lines of railroad and properties of Debtor C. O. & G. including the lines of railroad and properties upon which the C. & M. Indenture constituted, and now constitutes, a first lien, and the lines of railroad and properties upon which a certain Indenture, dated May 1, 1902, by Debtor C. O. & G. to Girard Trust Company, as Trustee, under and pursuant to which the C. O. & G. Bonds in an aggregate principal amount of $10,911,000 have been issued, constituted a first lien. As rental to be paid by Debtor Pacific Company under said lease, and as consideration therefor, among other things, Debtor Pacific Company covenanted and agreed in said lease (Article Third) to pay by way of rental:

> "(c) all rentals or other compensations due or owing by the lessor under or by virtue of the provisions of any lease, trackage arrangement or operating contract under and by virtue of which the lessor has the right to use the railway, or any part thereof, of any other railway company;
>
> (d) an amount equal to the interest accruing on the said $5,500,000 five per cent. General Mortgage bonds of the lessor, the said $3,525,000 five per cent. bonds of Choctaw and Memphis Railroad Company, the said $355,000 six per cent. bonds of Little Rock Bridge Company, the $5,411,000 Consolidated Mortgage five per cent. bonds of the lessor and all of such Consolidated Mortgage bonds hereafter issued by the lessor at the request or with the consent of the lessee; such payments to be made by payment of said interest as it accrues to the holders of said bonds in accordance with the terms thereof and of the mortgages or deeds of trust securing the same;"

8. Upon information and belief, Debtor Pacific Company, Debtor C. O. & G. and other subsidiary corporations to Debtor Pacific Company, are parties to the above entitled proceedings as Debtors; Frank O. Lowden, James E. Gorman and Joseph B. Fleming at all times since the appointment of Trustees for the Debtors, have been acting as Trustees for the several Debtors, including Debtor Pacific Company and Debtor C. O. & G.; and have collected the earnings, rents, issues and profits of all of the lines of railroad and property constituting the unified railway

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system of Debtor Pacific Company, and carried the same in an account or accounts in the names of the Trustees, as Trustees of Debtor Pacific Company.

9. Upon information and belief, on January 1, 1934, July 1, 1934 and January 1, 1935, semi-annual instalments of interest, each in the amount of $88,100, became due and payable on the C. & M. Bonds, but no part of any of such instalments has been paid by the Trustees in any capacity or by any other person. The aggregate amount of past due and unpaid interest on the C. & M. Bonds, representing the three defaulted instalments just mentioned, is $264,300.

10. Upon information and belief, your petitioners have been furnished with a certain "Income Account by mortgaged lines for the twelve months ended May 31, 1934," which your petitioners are informed has been prepared by or under the direction of the Trustees, and which said statement purports to set forth, segregated as to each unit of railroad lines in the unified railway system of Debtor Pacific Company, the earnings of the respective units during said annual period covered by said statement. Such statement shows that for said annual period, the earnings of the lines upon which the C. & M. Indenture constitutes a first lien aggregated $492,206.50 available for interest before deducting intra-company items and $389,884.27 after deducting such items. The first figure above stated of earnings available for interest is 2.79 times annual interest charges on the outstanding C. & M. Bonds and the second is 2.21 times such charges. Your petitioners are informed and believe that since May 31, 1934, the Trustees have not prepared further statements segregating earnings of the various units of railroad constituting the unified railway system of Debtor Pacific Company, but are further informed and believe that the earnings of the lines upon which the C. & M. Indenture constitutes a first lien have been such as to make available for interest, after all deductions, more than twice interest charges on the C. & M. Bonds outstanding, and are further informed and believe that no other unit of the unified railway system of Debtor Pacific Company has shown earnings in any way comparable to that of the lines upon which the C. & M. Indenture constitutes a first lien, so far as the earnings available for interest of the respective units are related to interest charges thereon.

11. Upon information and belief, your petitioners have heretofore filed in the above entitled proceedings their certain petition, dated January 26, 1934; argument was duly heard on said petition on or about April 17, 1934; briefs have been filed therein by interested parties; but up to this time, this Court has rendered no decision thereon. Other than prayed for in said petition just mentioned, your petitioners have sought no relief prayed for herein.

WHEREFORE, your petitioners pray that an order be entered herein directing the Trustees aforesaid herein to pay to the holders of C. & M. Bonds outstanding the interest instalments due thereon and in default, to wit, the semi-annual instalments due as aforesaid on January 1, 1934, July 1, 1934 and January 1, 1935, with interest on said instalments from their due date to the date of payment at the rate of 5% per annum, and for such other and further relief as may be deemed just and proper.

Dated, January 11, 1935.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds.
By JOHN C. TRAPHAGEN,
Chairman.

COTTON, FRANKLIN, WRIGHT & GORDON,
Attorneys for Petitioners,
No. 63 Wall Street,
New York, N. Y.

[Verification omitted in printing.]

And afterwards, to wit, on the 29th day of January, A. D. 1935, being one of the days of the regular December, 1934 term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

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Order.

Entered January 29, 1935

This cause coming on to be heard upon the Petition of John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds; and the following appearing:

EDWARD L. WILLIAMS, ESQ.,
Counsel for the Petitioners;
EDWARD W. BOURNE, ESQ.,
of Alexander and Green,
Counsel for the Protective Committee of the General Mortgage 4% Gold Bonds;
EDWARD C. BAILLY, ESQ.,
of Hornblower, Miller, Miller & Boston,
Counsel for the Protective Committee for the Burlington, Cedar Rapids & Northern Consolidated Mortgage 5% Gold Bonds;
MARCUS L. BELL,
W. F. DICKINSON,
Solicitors for the Trustees;

and this matter having been submitted to the Court on the said petition and the answers thereto filed on behalf of the Protective Committees representing the St. Paul and Kansas City Short Line Railroad Company First Mortgage 4½% Gold Bonds, and Rock Island, Arkansas and Louisiana Railroad Company First Mortgage 4½% Gold Bonds; and Counsel for the Trustees having stated in open court they have been advised by Counsel for the Protective Committee representing the holders of Equipment Trust Certificates and by Counsel for the Protective Committee representing the First and Refunding 4% Gold Bonds and secured 4½% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company that said committees do not oppose the payment of one semi-annual installment of interest on the Choctaw & Memphis 5% Gold Bonds, and it appearing likewise from the statements of counsel in open court that such payment will meet with the concurrence of the Protective Committee for the General Mortgage 4% Gold Bonds and the Protective Committee for the Burlington, Cedar Rapids and Northern Consolidated Mortgage

5% Gold Bonds; that no objection is made to such payment by the Committee representing The Chicago, Rock Island and Pacific Railway Company Convertible Gold Bonds and that in view of the concurrence of said committees herein the said Trustees are willing to make such payment, and the Court having heard the statement of Counsel, and being fully advised in the premises, it is

ORDERED, That the Trustees herein be and they hereby are authorized and directed, from the funds in their hands, to pay on February 5, 1935, interest due January 1, 1934 (represented by interest coupon maturing on that date) upon the $3,524,000 Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds outstanding, which said interest amounts to $88,100, and in addition to pay to each holder of a coupon or claim for interest on said Bonds due on said date interest on the amount so due for interest at the rate of five per cent per annum from the due date of the interest payment aforesaid to the date of payment aforesaid; and

FURTHER ORDERED that the foregoing is without prejudice to the right of any party hereto to object to any further payments of interest on said Bonds; shall in no way be deemed to be a precedent for any future application for payment of interest on said Bonds or any other obligations of the trust estates; shall in no manner be considered as affecting the status of the lease of March 24, 1904, from The Choctaw, Oklahoma & Gulf Railroad Company to The Chicago, Rock Island and Pacific Railroad Company; and the Court reserves the right upon application by any of the parties to these proceedings or on its own motion at any time during the pendency of these proceedings to determine any equitable adjustment between those interested in these proceedings with respect to any use which may have been made of any tolls, earnings, income, rents, issues, and profits of any portion of the trust estates.

ENTER:

JAMES H. WILKERSON,
Judge.

Dated, January 29, 1935.

And afterwards on, to wit, the 25th day of July, A. D. 1935, came John C. Traphagen *et al.* by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

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Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due July 1, 1934, January 1, 1935 and July 1, 1935, on Said Choctaw and Memphis Bonds.

Filed July 25, 1935.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The petition of John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, respectfully shows that:

1. On October 30, 1933, at the instance and request of the holders of large amounts of both Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952 (hereinafter referred to as C. O. & G. Bonds), and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949 (hereinafter referred to as C. & M. Bonds), your petitioners were organized as a Protective Committee for the holders of C. O. & G. Bonds and C. & M. Bonds outstanding in the hands of the public. Your petitioners are now acting as such Committee under and pursuant to a certain Deposit Agreement, dated November 2, 1934, as amended on December 5, 1934. At the time of the organization of your petitioners as a Committee aforesaid, John C. Traphagen was duly appointed Chairman of said Committee, and S. L. DeVausney was duly appointed Secretary of said Committee, and said persons have at all times since acted in such capacities. On December 28, 1933, by order of this Court (Order No. 38), your petitioners were allowed to intervene generally as parties to the above entitled proceedings.

2. Upon information and belief, under date of January 2, 1899, Choctaw and Memphis Railroad Company (hereinafter referred to as C. & M.) duly executed and delivered to Girard Life Insurance, Annuity and Trust Company of Philadelphia, as Trustee, an Indenture (hereinafter referred to as the C. & M. Indenture), authorizing the issuance thereunder of an aggregate of $3,750,000 principal amount of the C. & M. Bonds. Girard Trust Company is now Successor Trustee under the C. & M. Indenture.

3. Upon information and belief, thereafter in accordance with provisions of the C. & M. Indenture, there were duly executed, authenticated, issued and sold by C. & M. and there are now outstanding in the hands of the public, $3,524,000 aggregate principal amount of the C. & M. Bonds and, in addition, $1,000 principal amount thereof were executed, authenticated and issued, and are now owned and held in the treasury of The Chicago, Rock Island and Pacific Railway Company (hereinafter referred to as the Debtor Pacific Company).

4. Upon information and belief, the C. & M. Bonds hereinabove referred to are secured by, among other things, a first lien on 280.49 miles of railroad from a point on the west bank of the Mississippi, opposite Memphis, Tennessee, to the Arkansas-Oklahoma line on certain property in Memphis, Tennessee, and on appurtenances to said line of railroad.

5. Upon information and belief, after the issuance and sale of the C. & M. Bonds as aforesaid, C. & M. sold, subject to the lien of the C. & M. Indenture, all of its property to Choctaw, Oklahoma and Gulf Railroad Company (hereinafter referred to as Debtor C. O. & G.) in consideration of, among other things, the agreement and undertaking by Debtor C. O. & G. to pay all the C. & M. Bonds theretofore issued and those that might thereafter be issued under the C. & M. Indenture.

6. Upon information and belief, subsequent to the sale of its property as aforesaid by C. & M. to Debtor C. O. & G., the Articles of Association of C. & M. were allowed to lapse.

7. Upon information and belief, under date of March 24, 1904, Debtor C. O. & G. and Debtor Pacific Company entered into a certain lease under the terms of which Debtor C. O. & G. leased to Debtor Pacific Company, for the term of 999 years, the lines of railroad and properties of Debtor C. O. & G. including the lines of railroad and

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properties upon which the C. & M. Indenture constituted, and now constitutes, a first lien, and the lines of railroad and properties upon which a certain Indenture, dated May 1, 1902, by Debtor C. O. & G. to Girard Trust Company, as Trustee, constituted a first lien, and under and pursuant to which Indenture the C. O. & G. Bonds in an aggregate principal amount of $10,911,000 have been issued. As rental to be paid by Debtor Pacific Company under said lease, and as consideration therefor, among other things, Debtor Pacific Company covenanted and agreed in said lease (Article Third) to pay by way of rental:

> "(c) all rentals or other compensations due or owing by the lessor under or by virtue of the provisions of any lease, trackage arrangement or operating contract under and by virtue of which the lessor has the right to use the railway, or any part thereof, of any other railway company;
>
> "(d) an amount equal to the interest accruing on the said $5,500,000 five per cent. General Mortgage bonds of the lessor, the said $3,525,000 five per cent. bonds of Choctaw and Memphis Railroad Company, the said $355,000 six per cent. bonds of Little Rock Bridge Company, the $5,411,000 Consolidated Mortgage five per cent. bonds of the lessor and all of such Consolidated Mortgage bonds hereafter issued by the lessor at the request or with the consent of the lessee; such payments to be made by payment of said interest as it accrues to the holders of said bonds in accordance with the terms thereof and of the mortgages or deeds of trust securing the same."

8. Upon information and belief, Debtor Pacific Company, Debtor C. O. & G. and other subsidiary corporations to Debtor Pacific Company, are parties to the above entitled proceedings as Debtors; Frank O. Lowden, James E. Gorman and Joseph B. Fleming at all times since the appointment of Trustees for the Debtors, have been acting as Trustees for the several Debtors, including Debtor Pacific Company and Debtor C. O. & G. and have collected the earnings, rents, issues and profits of all of the lines of railroad and property constituting the unified railway system of Debtor Pacific Company, and carried the same in an account or accounts in the names of the Trustees, as Trustees of Debtor Pacific Company.

9. Upon information and belief, on January 1, 1934, July 1, 1934, January 1, 1935, and July 1, 1935, semi-annual instalments of interest, each in the amount of $88,100, became due and payable on the C. & M. Bonds, and by an order of this Court (Order 43), made and entered on January 29, 1935, the Trustees were authorized and directed to pay, and did pay, on February 5, 1935, the interest due January 1, 1934, on the C. & M. Bonds together with interest on said interest at the rate of 5% per annum to the date of payment; but no other or further payment of any such instalments of interest has been made by the Trustees in any capacity or by any other person. The aggregate amount of past due and unpaid interest on the C. & M. Bonds, representing the three defaulted instalments on which no payments have been made, is $264,300.

10. Upon information and belief, your petitioners have been furnished monthly with an "Income Account Statement" for "Rock Island Lines," which term includes the lines of railroad operated by the Debtor Pacific Company and the Chicago, Rock Island and Gulf Railway Company, which your petitioners are informed has been prepared under the direction of the Trustees and which statements purport to set forth, among other things, the gross revenue and gross income of the said Rock Island Lines for respective months. Said statements show that, for the annual period from June, 1933 to May, 1934 inclusive, the gross revenue of the said Rock Island Lines was $66,808,910 and that for the corresponding annual period for the years 1934-1935 the gross revenue of said Rock Island Lines was $66,665,842; and that therefore the gross business done by said lines during the two said annual periods is similar and closely related in dollar amount and that said annual periods are therefore in this respect comparable periods. Said statements further show that the Gross Income of said Rock Island Lines for the said annual periods of 1933-1934 and 1934-1935 are respectively $3,565,718 and $1,029,503. Your petitioners are informed and believe and therefore allege that the reasons for the difference between said gross income in said annual periods of 1933-1934 and 1934-1935 are principally increase in labor costs and increase in costs of materials and supplies; that these reasons operated with no greater force upon the lines upon which the C. & M. Indenture constitutes a first lien than upon other of the Rock Island Lines; and that if there is any difference at all

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in the operation of said factors the difference is favorable to the lines upon which the C. & M. Indenture constitutes a first lien. Your petitioners have also been furnished with a certain "Income Account by Mortgaged Lines for the Twelve Months ended May 31, 1934," which your petitioners are informed has been prepared under the direction of the Trustees and which purports to set forth, segregated as to each unit of railroad lines in the unified system of Debtor Pacific Company, the earnings of the respective units during said annual period. Said Income Account shows that for said annual period of 1933-1934 the gross income of the lines upon which the C. & M. Indenture constitutes a first lien, after deducting all intra-Company adjustments, was $389,884 or 10.93% of the gross income for said period of the Rock Island Lines as a whole. Your petitioners believe and therefore allege that in view of the facts heretofore alleged in this paragraph, the lowest amount which should be allocated as gross income for the annual period 1934-1935 to the lines upon which the C. & M. Indenture constitutes a first lien is 10.93% of the gross income of the Rock Island Lines as a whole for said period, or $112,525. Said amount, plus the $389,884 heretofore shown to have been earned for the annual period 1933-1934 less $88,100 heretofore paid under Order No. 43, equals $414,309 or $150,009 in excess of the interest installments now due and payable on the C. & M. Bonds, which interest installments aggregate $264,300. Your petitioners believe and therefore allege that the foregoing facts and computation show that the earnings of the lines upon which the C. & M. Indenture constitutes a first lien have undoubtedly been such as to make available for interest, after all deductions, substantially more than enough to pay the accrued interest charges on the outstanding C. & M. Bonds, and that no other unit of the unified system of Debtor Pacific Company has shown earnings in any way comparable to those of the lines upon which the C. & M. Indenture constitutes a first lien, so far as the earnings available for interest of the respective units are related to interest charges thereon. Your petitioners are informed and believe that since May 31, 1934, the Trustees have not prepared further statements segregating the earnings of the various units of railroad constituting the unified system of the Debtor Pacific Company. The computations set forth above are, therefore, made from the only sources which have been

made available to your petitioners, and they are made without prejudice to any other or future computation or allocation of income for said periods or any other period.

11. Upon information and belief, your petitioners have heretofore filed in the above entitled proceedings their certain petition, dated January 26, 1934; argument was duly heard on said petition on or about April 17, 1934; briefs were filed therein by interested parties; but up to this time this Court has rendered no decision thereon. Your petitioners have heretofore filed in the above entitled proceedings their certain petition for the payment of interes on the C. & M. Bonds, dated January 11, 1935, and after a hearing thereon this Court ordered (Order 43) the payment of interest due January 1, 1935 on the C. & M. Bonds. Other than as set forth in this paragraph, your petitioners have sought no relief prayed for herein.

WHEREFORE, your petitioners pray that an order be entered herein directing the Trustees to pay to the holders of C. & M. Bonds outstanding the interest instalments due thereon and in default, to wit: the semi-annual instalments due as aforesaid on July 1, 1934, January 1, 1935 and July 1, 1935, with interest on said instalments from their respective due dates to the date of payment at the rate of 5% per annum, and for such other and further relief as may be deemed just and proper.

Dated, July 19, 1935.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds.

By JOHN C. TRAPHAGEN,
Chairman.

COTTON, FRANKLIN, WRIGHT & GORDON,
Attorneys for Petitioners,
No. 63 Wall Street,
New York, N. Y.

[Verification omitted in printing.]

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Answer of Trustees to Petition, etc.

And afterwards on, to wit, the 17th day of September A. D. 1935, came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Answer of Trustees to Petition of Protective Committee for Choctaw, Oklahoma and Gulf Bonds for an Order Directing the Payment of Interest on Choctaw & Memphis First Mortgage 5% Gold Bonds.

Filed September 17, 1935

Now come the Trustees herein and for answer to the above-mentioned petition, respectfully show:

1. They admit the allegations in paragraphs 1, 2, 3, 4, 5, 6, 7, 8 and 9 of said petition.

2. Answering paragraph 10 of the petition, the Trustees admit the preparation and furnishing to the petitioners of the monthly income account statements and of the income account by mortgaged lines for the twelve months ended May 31, 1934, prepared in accordance with the formula for the segregation of earnings, as more fully appears from the statement of earnings accompanying Trustees' petition for Order No. 45B, filed herein November 9, 1934.

3. Trustees state that during the current year the trust estate has not earned its actual operating expenses, the deficit for the first seven months of the year being $1,291,867, as compared with the income above operating expenses for the corresponding period of 1934 of $853,641. The operating revenues for the first seven months of 1935 were $37,356,387 as compared with $38,530,219 for the first seven months of 1934.

In view of the fact that the trust estate is not earning its operating expenses and the deficit for the first seven months of 1935 is the amount stated, the Trustees are without funds with which to pay the interest now due on the said Choctaw and Memphis Bonds.

The Trustees therefore are not willing to recommend to the Court the payment of the interest prayed for.

Respectfully submitted,

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING, *Trustees,*
By JAMES E. GORMAN,
One of said Trustees.

[Verification omitted in printing.]

And afterwards, to wit, on the 20th day of September, A. D. 1935, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Entered September 20, 1935

Order Respecting Payment of Interest on Choctaw and Memphis Railroad Company First Mortgage 5% Bonds, Due January 1, 1949.

On this day coming on to be heard the verified petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, filed herein on July 25, 1935, for an order directing the Trustees of the debtors to pay the interest due July 1, 1934, January 1, 1935, and July 1, 1935, on said Choctaw and Memphis bonds, the petitioner appearing by Edward L. Williams, Esq., of Cotton, Franklin, Wright & Gordon, Attorneys for said petitioner; and the Court having heard the statements of counsel and having considered the facts presented and the reasons asserted for the payment of such interest, and being fully advised in the premises, it is

ORDERED:

That the prayer of said petition for entry of an order herein directing the Trustees to pay to the holders of Choctaw and Memphis Railroad Company First Mortgage 5% bonds, due January 1, 1949, the interest installments due thereon, to-wit: the semi-annual installments due on July 1, 1934, January 1, 1935 and July 1, 1935, be and the same is hereby denied; but saving to the holders of said bonds, for future consideration in connection with the plan or plans for reorganization or otherwise, any rights which they may assert by reason of their claims that mortgage interest has been earned on that part of the system property that is subject to the lien of the Choctaw and Memphis 5% First Mortgage.

ENTER:

JAMES H. WILKERSON
Judge.

DATED, September 20, 1935.

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Answer of Trustees to Petition for Order for Allocation of Earnings and Expenses.

And afterwards on, to wit, the 14th day of June, A. D. 1937, came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Answer of Trustees to Petition for Order for Allocation of Earnings and Expenses.

Filed June 14, 1937

And now come Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees herein, and for answer to the petition of the Protective Committee for the General Mortgage 4% Bonds of The Chicago, Rock Island and Pacific Railway Company, and the Protective Committee for the First and Refunding Mortgage Bonds and Secured 4½% Bonds, Series A, of said Company, respectfully show:

1. They have no objections to the correctness of the formula for allocation of earnings and expenses as between the several mortgage divisions herein as proposed by the petitions.

2. To apply the said formula currently month by month to the operations of the trust estates will entail an expense of some $70,000 a year; to apply the same all at one time for the figures for one year would cost approximately $40,000.

3. Paragraph 10 of Section 77 (c) of the Acts of Congress relating to bankruptcy, provides:

> "(10) The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate."

Answer of Trustees to Petition for Order for Allocation of Earnings and Expenses.

The Trustees refer to the second revised formula previously submitted by them, which was applied month by month for a period of one full year to the earnings of the entire trust estate at an expense of some $7,000 per month, as more fully appears from their petition filed herein November 2, 1934, Printed Record 663; and by Order No. 45-B, entered herein November 9, 1934, the Court authorized the discontinuance of the application of the second revised formula. The Trustees submit that it would be a waste of funds of the trust estate to apply at this time any formula for the segregation of earnings unless all interested parties had approved the same in advance of its application and agreed to be bound by the results. The Trustees further submit that several hearings have already been held and further hearings are to be held by the Interstate Commerce Commission on a plan of reorganization, the next of such hearings being set for June 21, 1937; that studies in connection therewith have been and are being made by the Commission; that the Commission has a staff of competent and experienced persons who are familiar with matters of segregation and allocation of accounts and of the earnings and expenses of railroads, and that its recommendations relative to the matter of the formula would be of much value to the parties in interest herein.

The Trustees recommend that the matter be referred to the Interstate Commerce Commission pursuant to the above quoted section for its recommendation after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made.

Respectfully submitted,
FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees,
By JAMES E. GORMAN,
One of said Trustees.

[Verification Omitted in Printing.]

And afterwards, to wit, on the 17th day of June, A. D. 1937, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

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Order for Allocation of Earnings and Expenses.

Entered June 17, 1937

This cause coming on this day for further hearing upon the petition of the Protective Committee for the Debtor's General Mortgage Bonds and the Protective Committee for the Debtor's First and Refunding Mortgage Bonds and Secured 4½% Bonds, Series A, and the order entered herein May 24, 1937, known as Order No. 106, and it appearing to the Court that pursuant to said order petitioners have circulated among the other parties to this proceeding the proposed formula for the allocation of revenues and expenses, and that answers have been filed herein by the Trustees of The Chicago, Rock Island and Pacific Railway Company, Debtor herein, by Marine Midland Trust Company of New York, as Trustee of the St. Paul and Kansas City Short Line Railroad Company, by Reconstruction Finance Corporation, by the Protective Committee for Bondholders of Rock Island, Arkansas and Louisiana Railroad Company, by the Protective Committee for Burlington, Cedar Rapids and Northern Consolidated First Mortgage Bonds, by Marine Midland Trust Company of New York, as Trustee of Rock Island, Arkansas and Louisiana First Mortgage and an affidavit of William V. Griffin, Chairman of Protective Committee for the holders of St. Paul and Kansas City Short Line 4½% Bonds, and it appearing that all of the parties hereto have been duly notified of this hearing upon said petition, and the parties having appeared by their respective counsel as follows:

Protective Committee for the Debtor's General Mortgage Bonds by Clifton P. Williamson and Edward W. Bourne;

Protective Committee for the Debtor's First and Refunding Mortgage Bonds and Secured 4½% Bonds by Joseph Schreiber;

Protective Committee for the B. C. R. & N. Consolidated First Mortgage Bonds by Edward C. Bailly;

Protective Committee for the St. P. & K. C. Short Line Bonds by Charles R. Lowther;

Protective Committee for R. I. A. & L. First Mortgage Bonds by Eugene W. Leake;

Reconstruction Finance Corporation by James A. Sprowl and George E. MacMurray;

The Trustee of R. I. A. & L. First Mortgage by Emmet McCaffery;

Order for Allocation of Earnings and Expenses.

The Trustee of St. P. & K. C. Short Line First Mortgage by Thomas Epstein;
The Protective Committee for C. R. I. & P. preferred stockholders by Robert McClory;
Trustees of C. R. I. & P. Ry. Co. by Otis F. Glenn and Marcus L. Bell;
The Trustee of the Indenture securing the Debtor's 4½% Secured Bonds, Series A, by John A. Hill;

and no objection having been made to the entry of this order except on behalf of the Protective Committee for B. C. R. & N. Consolidated Mortgage Bonds, and the Court having heard the statements of counsel and offer of proof on behalf of petitioners, and being fully advised in the premises, it is

ORDERED:

1. That the "Formula for Segregating Revenues and Expenses of the Different Mortgage Divisions of the Rock Island Lines," dated June 4, 1937, proposed by said petitioners, as amended in open court, a copy of which is attached hereto, is hereby approved, subject to the terms and conditions hereinafter contained;

2. That the Trustees of the Debtor are directed to apply such formula to the operations of the Rock Island Lines for each six months' period beginning January 1, 1936 and ending December 31, 1937 (expenses to be calculated monthly) and as soon as practicable to file with the Clerk of this Court, and serve upon the parties hereto copies of, statements showing the allocation among the different mortgage divisions herein in accordance with such formula of the earnings and expenses of the Rock Island Lines for each such period, and also statements in respect of each such period containing the information required by the provisions appended to said formula under the heading "Supplemental Information";

3. That any party, including petitioners, desiring to have the formula include any inter-mortgage division accounting for equipment or property under one mortgage and used in connection with one or more other mortgage divisions may at any time file with the Clerk of this Court proposed provisions relating thereto and serve copies thereof upon the parties hereto; any other party may, within ten days after such service, file with the Clerk of this Court and serve upon the parties hereto objections

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to the provisions so proposed or other proposed provisions relating thereto; thereupon any party, including the petitioners, may upon notice move this Court for an appropriate order for a modification of the formula;

4. That the approval of the formula herein shall be without prejudice to the right of any party including petitioners, to move to modify the same in any respect in which it shall appear to be incomplete or to operate inequitably;

5. That nothing herein shall be deemed to require or contemplate that the results of the allocation of earnings and expenses herein provided for shall be the sole factor to be considered in determining the relative values of the different mortgage divisions, or to exclude consideration of contributed traffic, strategic position, prospective earnings, or any other relevant factors in determining such relative values;

6. The Court reserves the right to make any other or further order with respect to the said formula, and the application thereof as may seem just; and this order shall not constitute, and shall be without prejudice to, a final determination of the rights and liens of the respective mortgage trustees and other parties hereto in respect of any earnings and income and the credit for the transportation of company material;

7. The provision of paragraph 2 hereof, with respect to the application of the formula for the period ending December 31, 1937, is not intended to preclude or delay a reorganization or any steps looking thereto within such period but only to direct the keeping of the necessary records curently for such period and the filing of the statement provided for in paragraph 2 as soon as practicable after the conclusion of such period if a plan of reorganization shall not have been consummated.

ENTER:

JAMES H. WILKERSON,
Judge.

Dated, June 17, 1937.

And afterwards on, to wit, the 7th day of April, A. D. 1938, came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Filed April 7, 1938

Petition of Trustees for an Order Respecting Amended Modified Formula for Segregation of Revenues and Expenses.

Frank O. Lowden, James E. Gorman and Joseph B Fleming, Trustees of the estates of the several debtors herein, respectfully show to the Court:

1. By Order No. 106-A of this Court, entered herein on June 17, 1937, this Court approved, subject to the terms and conditions contained in said Order, a "Formula for Segregating Revenues and Expenses of the Different Mortgage Divisions of the Rock Island Lines" in the form thereto annexed, and directed your petitioners to apply such formula to the operations of the Rock Island Lines for each six months' period beginning January 1, 1936 and ending December 31, 1937, and as soon as practicable to file with the Clerk of this Court, and to serve upon the parties hereto copies of, statements showing the allocation among the different mortgage divisions in accordance with such formula of the earnings and expenses of the Rock Island Lines for each such period, and also statements in respect of each such period containing the information required by the provisions appended to that formula under the heading "Supplemental Information."

2. Pursuant to Order No. 106-A, your petitioners applied such formula to the operations of the Rock Island Lines for the two six-months' periods in the year 1936 and by January 31, 1938, served upon the parties hereto copies of statements showing the allocation among the different mortgage divisions in accordance with their application of such formula of the earnings and expenses of the Rock Island Lines for the two six-months' periods in the year 1936, and also copies of statements in respect of each of such two six-months' periods containing information called for by the provisions appended to such formula under the heading "Supplemental Information."

3. It will be to the advantage of all parties hereto, in connection with the reorganization proceedings pending before the Interstate Commerce Commission, that the parties hereto be supplied at the earliest possible date with reasonably accurate estimates of the approximate earnings for 1937 of the various mortgage divisions of the Rock Island System. The hearings in the reorganization proceedings before the Interstate Commerce Commission

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were adjourned on March 1, 1938 to June 28, 1938, as the result of an agreement of the Protective Committee for The Chicago, Rock Island and Pacific Railway Company First and Refunding Mortgage Bonds and Secured 4½% Bonds, Series A, that said Committee would file with the Commission on or before June 28, 1938 a plan of reorganization for the Rock Island System setting forth not only the proposed capitalization but also an allocation of the new securities among the existing security holders and creditors and that it would be prepared at the hearings then to be held to introduce proof in support of such plan. Said Committee made the agreement to prepare and file such a plan by June 28, 1938, as stated in its petition to the Interstate Commerce Commission, in the belief that certain specified data and information would be forthcoming at times which would enable the Committee so to do. Such data and information included, among other things, figures as to earnings and expenses for the full year 1937 of the various mortgage divisions, compiled in accordance with an abridged formula which would enable your petitioner to supply such figures at an early date.

4. Your petitioners are advised by the General Auditor of the Rock Island that if the formula approved in Order 106-A were applied to operations for the two six-months' periods in 1937, the results would not be available until June 1, 1938 in respect of the first six months, and September 1, 1938 in respect of the second six months, and that the cost of applying such formula for the full year 1937 would be approximately $90,000. To obtain information as to the approximate earnings of the respective mortgage divisions for the year 1937 at an early date, and in order to save expenses, if possible, representatives of certain Committees requested your petitioners to have their staff prepare an abridged formula for allocating the earnings and expenses of the Rock Island Lines for the year 1937 among the different mortgage divisions which would give results at an early date approximating with reasonable accuracy those which would be obtained by the application of the formula approved under Order No. 106-A. As a result of such request a proposed modified formula was prepared by your petitioners' staff and submitted to the various Committees and others; and after conferences with the experts for such groups such proposed modified formula was amended in certain respects.

The Amended Modified Formula which appears as Exhibit A hereto is a copy of the formula so proposed by the Trustees' staff as amended.

Your petitioners are advised that the figures for 1937 under the Amended Modified Formula should be available by May 1, 1938, and will cost approximately $15,000. If it later proves necessary to have complete figures for 1937 under Order No. 106-A, the additional cost of having obtained the figures under the Amended Modified Formula would be only about $5,000.

5. Your petitioners believe that the Amended Modified Formula will produce results approximating with reasonable accuracy those which would be obtained by application of the formula approved in Order No. 106-A and that the immediate application of the Amended Modified Formula to operations for the year 1937 is necessary in order that a plan of reorganization may be formulated and filed with the Interstate Commerce Commission by June 28, 1938.

Your petitioners are advised that several of the parties are unwilling to consent now to an order providing that the figures to be obtained under the Amended Modified Formula for the year 1937 shall take the place of those provided for in Order No. 106-A for any purpose, because of the inevitable uncertainty of the effect of the abridgement effected in the Amended Modified Formula, but that those parties desire to have obtained now the figures for 1937 under the Amended Modified Formula, and for this purpose are agreeable to the suspension of the application of the formula approved in Order No. 106-A to operations for 1937 until the figures are compiled for that year under the Amended Modified Formula.

Your petitioners believe that it is expedient and wise to have the Amended Modified Formula applied to the year 1937, suspending the application of the formula approved in Order No. 106-A to operations for that year until the figures are compiled under the Amended Modified Formula. Your petitioners believe that when the figures for 1937 are obtained under the Amended Modified Formula the parties hereto may then be willing to dispense with the application of the formula approved in Order No. 106-A to operations for that year.

6. There is now pending before the Special Master a proceeding for the addition to the formula approved under

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Order No. 106-A of provisions, proposed pursuant to paragraph No. 3 of said Order, relating to inter-mortgage division accounting for equipment or property under one mortgage and used in connection with one or more other mortgage divisions. The Amended Modified Formula, like the formula approved under Order No. 106-A, does not contain provisions regarding inter-mortgage division accounting for equipment or property under one mortgage and used in connection with one or more other mortgage divisions, but provides that whatever provisions may be finally approved by the Court for inclusion in the formula approved in Order No. 106-A, shall be deemed to be included in the Amended Modified Formula.

WHEREFORE, your petitioners pray:

1. That the Trustees be authorized by the Court to apply such Amended Modified Formula to the operations of the Rock Island Lines for each of the two six-months' periods in the calendar year 1937, and as soon as practicable to serve upon the parties hereto copies of statements showing the allocation among the different mortgage divisions in accordance with such Amended Modified Formula of the earnings and expenses of the Rock Island Lines for each such period, and the information required by the provisions appended to said Amended Modified Formula under the heading "Supplemental Information."

2. That the Trustees be authorized to suspend, until the figures are compiled under the Amended Modified Formula for the two six-months' periods in the calendar year 1937, the application of the formula approved under Order No. 106-A, entered herein on June 17, 1937, to operations for the two six-months' periods in the calendar year 1937.

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees,
By JAMES E. GORMAN,
For said Trustees.

OTIS F. GLENN,
Counsel for Trustees.

[Verification omitted in Printing.]

And on the same day to wit, on the 7th day of April, A. D. 1938, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable James H. Wilkerson, District Judge, appears the following entry, to wit:

Entered April 7, 1938

Order for the Application of an Amended Modified Formula for the Allocation of Earnings and Expenses to Operations for 1937.

This cause coming on this day for hearing upon the petition of Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees herein, for an order for the application of an abridged formula for the allocation of earnings and expenses to operations for 1937, and it appearing that all parties hereto have been duly notified of this hearing upon said petition, and the Court having heard the statements of counsel and being fully advised in the premises, finds:

That it is expedient and in the interest of all persons concerned to have the Trustees herein apply the "Amended Modified Formula for Segregating Revenues and Expenses of Various Mortgaged Lines of Rock Island Lines," a copy of which is attached to said petition and marked Exhibit A, to the operations of the Rock Island Lines for each of the two six-months' periods in the calendar year 1937.

It is therefore, ORDERED:

1. That the Trustees herein are directed to apply such Amended Modified Formula to the operations of the Rock Island Lines, for each of the two six-months' periods in the calendar year 1937, and as soon as practicable to serve upon the parties hereto copies of statements showing the allocation among the different mortgage divisions herein in accordance with such Amended Modified Formula of the earnings and expenses of the Rock Island Lines for each such period, and containing in respect of each such period the information required by the provisions appended to said Amended Modified Formula under the heading "Supplementary Information";

2. That the Trustees herein are directed to suspend, until the figures are compiled under the Amended Modified Formula for the two six-months' periods in the calendar year 1937, the application of the formula approved

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under Order No. 106-A of this Court to operations for the two six-months' periods in the calendar year 1937.

3. That, anything herein to the contrary notwithstanding, the results of the application of said Amended Modified Formula to operations for the year 1937 shall constitute information only and that neither said Amended Modified Formula nor the results of the application thereof shall be binding for any purpose on any of the parties hereto.

4. That this order shall be without prejudice to the right of any party hereto to move, upon notice to all other parties, to modify said Amended Modified Formula in any respect, including the addition thereto of such provisions as may be proper, if any, for giving credits or making charges for the use by one or more mortgaged divisions of equipment or other property that is not subject to any mortgage lien.

To the entry of this order counsel for B. C. R. Committee object.

ENTER:

JAMES H. WILKERSON,
Judge.

Dated, April 7, 1938.

And afterwards on, to wit, the 11th day of April, A. D. 1938, came Jacob I. Grossman, Special Master and filed in the Clerk's office of said Court a certain Report, a portion of which is in words and figures following, to wit:

Master's Report on Objections to Proposed Report on Formula.

Filed April 11, 1938

Objections of General Mortgage Committee, et al.

I have carefully considered the language of the proposed additions to the formula as suggested by these objectors on pages 2 and 3 of their objections, and have concluded to adopt it as there set forth. I am accordingly adding that language to my proposed report.

On page 7 of my proposed report I have concluded to change the language "If it be so credited at all events, even though the road is in bankruptcy, the very certainty of the return suggests as the measure of return the rate of return on government bonds, or about 1½%" to read "If it is to be credited at all events, even though the road is in bank-

ruptcy, the very certainty of the return suggests a rate of not more than 1½%."

Choctaw Committee.

Charges and credits with respect to the use of equipment are deferred under the specific language of paragraph 3 of the additions suggested by the General Mortgage Committee, *et al.*, which I am adopting.

With reference to free equipment, there is no issue before the Master, as paragraph 3 of Order 106-A (Court Record 1589) and the language of the order of reference relate only to "any inter-mortgage division accounting for equipment or property under one mortgage and used in connection with one or more other mortgage divisions."

Subsection (c) (10) of Section 77 under which the order of reference was made provides for "a segregation and allocation * * * between and to the divisions * * * which are separately subject to the * * * various mortgages * * * or are separately subject to lease * * *."

Moreover, the suggestion as to so-called free equipment seems to me to be premature. That is one of the issues to be decided in the equipment lien controversy now under consideration by the Master. If it should be decided that there is free equipment, the question of whether a charge shall or shall not be made to mortgage divisions for the use of free equipment can be presented to the court by way of an application for modification of the formula. At that time the court may consider whether under the statute and the formula order a segregation or allocation may be made for so-called free equipment.

Offsetting charges and credits are provided for by subparagraph (a) of paragraph 6 of the additions to the formula, as set forth in my report.

I am of the opinion that the Choctaw & Memphis Railroad First Mortgage and Choctaw, Oklahoma & Gulf Railroad Consolidated Mortgage should be treated as separate mortgages. The reference to the Master was to determine inter-mortgage division accounting for equipment or property under one mortgage and used in connection with one or more other mortgage divisions.

First and Refunding Mortgage.

As stated in the comments on the objections of the General Mortgage Committee, I have changed the sentence on page 7 of my proposed report so as to eliminate reference

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to the rate of return on Government bonds. It should be noted that the objections of the First and Refunding Mortgage Committee are based upon the assumption that the rate of return on long-term Government bonds is involved. It is hoped that the period during which the formula will have to be in effect will be short.

As to the second objection, substantially the same considerations were urged in the briefs filed. While these arguments are very plausible, I regarded the arguments on the other side as also very plausible. I gave consideration to the arguments on both sides and reached the conclusions set forth in my report. Upon further consideration I adhere to those conclusions.

Reconstruction Finance Corporation.

This objector has asked to reopen the case to admit in evidence a document in the form of a stipulation concerning the Rock Island Improvement Company. By letter of April 1, 1938, this objector through its counsel stated its willingness that if the document be permitted to go into the record, it should be subject to correction of figures by the Rock Island accounting department. I am in receipt of a letter dated April 1, 1938, from the law department of the trustees of the Railroad, which letter states certain corrections to paragraphs 1, (e-4), (e-5) and (e-7).

In said letter of the Reconstruction Finance Corporation dated April 1, 1938, its attorneys state that the stipulation is without prejudice and subject to the claim of the Choctaw Committee that certain Oklahoma coal lands may belong to the C. O. & G.

Although objection has been made, I have concluded to reopen the record for the admission of this evidence, subject to the conditions and reservations above mentioned.

I have already concluded that the formula should be applied to such of the properties of the Rock Island Improvement Company as are used in the operation of the Rock Island Railroad System. The formula will, of course, apply only to such of the properties of the Rock Island Improvement Company as may be used by other mortgage divisions. The question as to whether particular items of property are so used is, of course, one of fact, to be determined by the accounting department of the System in making the records under the formula.

In this connection I call attention to the opinion of the Circuit Court of Appeals of the Seventh Circuit in *re Tax Service Association of Illinois,* Number 6355, rendered March 9, 1938. In that case the court held a fund subject to the summary jurisdiction of the bankruptcy court on the ground that the persons who had charge of the fund were acting as agents of the bankrupt.

Chase National Bank.

This bank, as trustee for the debtor's Thirty-Year Convertible Bonds which are unsecured, has suggested that as a result of the equipment lien controversy there may be a substantial amount of equipment in use upon the lines generally which will be free of liens; and that if there is a mass of free equipment, provision should be made for charging mortgage divisions for the use of free equipment. The contention is that if such a provision is not adopted, an undue portion of earnings will be credited to the mortgage divisions, operating unjustly as regards all of the general creditors. The Chase National Bank asserts that the accounting under Order 106-A and under subsection (c) (10) of Section 77 must be limited to equipment or property under one mortgage and used in connection with one or more other mortgage divisions, and that the earnings of one or more mortgage divisions should not have included therein the fair rental of equipment not subject to any mortgage. The Bank suggests that the free equipment be treated as a separate earnings unit, like a mortgage division, and that segregation of attributable earnings be made accordingly.

The respective committees for the General Mortgage, First and Refunding Mortgage and Choctaw Mortgages object to the suggestions of The Chase National Bank.

In this report under the heading of "Choctaw Committee" I have discussed this matter, and I refer to that discussion as a disposition of the suggestions of The Chase National Bank.

Dated at Chicago, Illinois, this 7th day of April, 1938.

Respectfully submitted,

JACOB I. GROSSMAN,
Master in Chancery.

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Petitioner's Exhibit 1D.

And afterwards on, to wit, the 14th day of April, A. D. 1939 there was filed in the Clerk's office of said Court Petitioner's Exhibit 1D in words and figures following, to wit:

Petitioner's Exhibit 1D.

Filed April 14, 1939

THIS INDENTURE, Made this second day of January, Anno Domini one thousand eight hundred and ninety-nine, between the CHOCTAW AND MEMPHIS RAILROAD COMPANY, hereinafter called the Railroad Company, of the first part, and THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY OF PHILADELPHIA, hereinafter called the Trustee, of the second part.

WHEREAS, The Railroad Company is a corporation organized and existing under the laws of the State of Arkansas, and has, under the laws of that State, full power to own, construct, equip, maintain, and operate the railroad and properties hereinafter described, and is the owner of the railroad, properties, rights, and franchises hereinafter described, except in so far as said railroads have not been constructed;

AND WHEREAS, The Little Rock and Memphis Railroad Company was a corporation duly created and existing under the laws of the State of Arkansas, and was the owner of a line of railroad and rights of way from the west bank of the Mississippi River, in or near Hopefield, in the county of Crittenden, in the State of Arkansas, to Little Rock, in the county of Pulaski, in the State of Arkansas, with the connections, rights, properties, privileges, and franchises hereinafter more particularly described, and made its certain issue of bonds and secured the same by mortgage upon the said railroads, properties, and franchises, and under the decree of the Circuit Court of the United States, in and for the Western Division of the Eastern District of Arkansas, in proceedings for the foreclosure of said mortgage, duly entered upon the twenty-second day of October, 1894, the said railroad, property, and franchises were upon the twenty-fifth day of October, 1898, duly sold by the Special Master appointed to make such sale, to a committee of the holders of said bonds, and upon compliance with the terms of said sale the same was confirmed, and a deed of conveyance duly executed, acknowledged and delivered in form previously submitted to said court and by it approved;

Petitioner's Exhibit 1D.

And Whereas, The Railroad Company was organized for the purpose of purchasing and taking title to the said line of railroad, and all the rights, properties, franchises, and privileges covered by the said mortgage of the Little Rock and Memphis Railroad Company, and included in said decree of foreclosure and the sale and conveyance made in pursuance thereof, and of owning, holding, and operating the same, and for the further purpose of constructing and equipping a line of railroad from a connection with the said Little Rock and Memphis Railroad, at Little Rock, to a point on the boundary line between Arkansas and the Indian Territory, there to connect with an extension of the line of railroad of the Choctaw, Oklahoma and Gulf Railroad Company, and by the said agreement of purchase it was provided that the Railroad Company should create an issue of first mortgage five per cent. fifty-year gold bonds, at the rate of not exceeding twelve thousand five hundred dollars for each mile of constructed and completed railroad, including the line from Memphis to Little Rock, drawing interest from July 1st, 1899, to be secured by a first mortgage covering the entire line of railroad and appurtenances of the Railroad Company, now owned or hereafter to be acquired, and the form and provisions of this present indenture of mortgage have been accepted and approved as in accordance with the provisions of the said agreement;

And Whereas, At a meeting of the stockholders of the Railroad Company, held on the second day of January, 1899, it was

Resolved, That the officers of this Company be and they are hereby authorized to create an issue of first mortgage five per cent. fifty-year gold bonds, at a rate of not exceeding twelve thousand five hundred dollars for each mile of railroad now or hereafter constructed and completed, drawing interest from July 1st, 1899, and to secure the same by a first mortgage covering the entire line of railroad and appurtenances of the Company, now owned or hereafter to be acquired, in such form and containing such provisions as the Board of Directors may prescribe;

And Whereas, At a meeting of the Board of Directors of the Railroad Company, held on the second day of January, 1899, the following preamble and resolutions were adopted:—

Whereas, For the purpose of carrying out the terms of the purchase of the railroad formerly the property of the

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Petitioner's Exhibit 1D.

Little Rock and Memphis Railroad Company, extending from the west bank of the Mississippi River, in or near Hopefield, in the county of Crittenden, in the State of Arkansas, to Little Rock, in the county of Pulaski, in the said State, and of providing the means for the construction and equipment of the proposed line of railroad from a connection with the Little Rock and Memphis Railroad, at Little Rock, Arkansas, to a point on the boundary line of Arkansas in the Indian Territory, there to connect with an extension of the line of the Choctaw, Oklahoma and Gulf Railroad, and for such other purposes as may be necessary and proper, it is necessary to create an issue of bonds and to secure the same by mortgage.

THEREFORE, RESOLVED, That an issue of first mortgage five per cent. fifty-year gold bonds, at a rate not exceeding twelve thousand five hundred dollars for each mile of railroad now or hereafter constructed and completed, and not exceeding in the aggregate the sum of three million seven hundred and fifty thousand dollars, drawing interest from July 1st, 1899, to be known as First Mortgage Gold Bonds, be and is hereby authorized.

SECOND.—The said bonds shall be substantially in form following:—

UNITED STATES OF AMERICA.

No. *State of Arkansas.* $1000.

KNOW ALL MEN BY THESE PRESENTS, That the Choctaw and Memphis Railroad Company, a corporation of the State of Arkansas, hereinafter called the Company, for value received, promises to pay to the bearer, or if registered to the registered holder of this bond, one thousand dollars, gold coin of the United States of America of not less than the present standard of weight and fineness, on the first day of January, in the year 1949, at the office of the Trustee in the city of Philadelphia, State of Pennsylvania, and to pay interest thereon at the rate of five per cent. per annum from July 1st, 1899, payable semi-annually in the cities of New York or Philadelphia, in like gold coin, on the first days of January and July in each year, but only upon the presentation and surrender of the annexed coupons as they severally mature. Both the principal and interest of this bond are payable without deduction for any tax or taxes of the United States, or any State or municipality thereof, which the Company may be required by law to retain therefrom under any present or future law.

Petitioner's Exhibit 1D.

This bond is one of a series of coupon or registered bonds duly authorized and approved by the board of directors and the stockholders of the Choctaw and Memphis Railroad Company, and issued and to be issued to an amount not exceeding in the aggregate the sum of three million seven hundred and fifty thousand dollars, at a rate not exceeding twelve thousand five hundred dollars for each mile of complete road, all of which bonds are issued under and in pursuance of and are equally secured by a mortgage or deed of trust dated January 2d, 1899, executed by the Company to The Girard Life Insurance, Annuity and Trust Company of Philadelphia, a corporation of the State of Pennsylvania, as Trustee of all the property and franchises of the Company mentioned in said mortgage or deed of trust, to which reference is hereby made for a description of the property and franchises mortgaged, and the nature and extent of the security, and the rights of the holders of the said bonds under the same, and the terms and conditions upon which the said bonds are issued and secured.

This bond may be registered as to principal in the owner's name on the books of the Company at its office or agency in the city of Philadelphia, or at its office or agency in the city of New York, such registry being noted on the bond by the Company's transfer agent, after which no transfer shall be valid unless made on the Company's books by the registered owner and similarly noted on the bond; but the same may be discharged from registry by being transferred to bearer, after which transferability by delivery shall be restored, but it may again from time to time be registered or transferred to bearer as before; such registration, however, shall not affect the negotiability of the coupons by delivery merely.

This bond shall not become obligatory for any purpose until it shall have been authenticated by the certificate hereon indorsed of the Trustee under said mortgage or deed of trust.

The holder of this bond or of any of the coupons hereto attached shall not have the right to levy upon or cause said mortgaged premises to be sold under or by virtue of any judgment that may be obtained by reason of default in the payment of the principal hereof, or of the coupons or interest hereon, when and as the same shall become due by lapse of time or in pursuance of any of the provisions of said mortgage, but such proceedings shall only be had under the mortgage as aforesaid on behalf of and for the equal

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benefit of all the holders of said bonds and coupons, as is provided in the said mortgage.

In Witness Whereof, The Choctaw and Memphis Railroad Company has caused its corporate seal to be hereto affixed, and the same to be attested by the signatures of its president and secretary, and has also caused the name of its treasurer to be engraved upon the coupons hereto annexed, this second day of January, A. D. 1899.

(Coupon.)

On , the Choctaw and Memphis Railroad Company will pay to bearer, at its office in the city of Philadelphia, or at its agency in the city of New York, twenty-five dollars in gold, being six months' interest on its first mortgage bond No.

Secretary.

(Trustee's Certificate.)

This bond is one of the issue of bonds within mentioned, and described in the mortgage or deed of trust dated January 2d, 1899, executed by the Choctaw and Memphis Railroad Company to the undersigned Trustee.

The Girard Life Insurance, Annuity, and Trust Company of Philadelphia,

By

President.

Third.—That the president and secretary be and they are hereby authorized and directed, in its behalf and under the corporate seal, and in the form substantially that is now submitted to this board, to execute and deliver a mortgage or deed of trust upon the property and franchises of the corporation, to be known as the first mortgage, to The Girard Life Insurance, Annuity and Trust Company of Philadelphia, as Trustee, to secure an issue of bonds not to exceed in the aggregate three million seven hundred and fifty thousand dollars, and when the said mortgage is so executed, to acknowledge, deliver, and record the same.

Resolved, That each bond, the execution of which is hereby authorized, shall be authenticated by the certificate thereon of the Trustee, or its successors in the said trust, in the form herein set forth, and without such certificate no bond shall be obligatory.

Resolved, That the coupons attached to said bonds shall be authenticated by the engraved signature of the present treasurer or of any future treasurer, it being intended that the Company may adopt and use for that purpose the en-

graved signature of any person who shall have been its treasurer, notwithstanding the fact that he may have ceased to be such treasurer at the time when such bonds shall be actually certified and delivered, or when such coupons shall be attached to the bonds.

SIXTH.—That the officers of the Company be and they are hereby authorized and directed to issue and deliver to the Central Trust Company of New York twelve hundred bonds of the aggregate amount of one million two hundred thousand dollars in payment of the purchase of the property formerly of the Little Rock and Memphis Railroad Company, and that, pending the preparation of engraved bonds, a temporary bond for one million two hundred thousand dollars shall be issued and delivered to said trust company, to be exchanged for and replaced by said engraved bonds when ready, which said temporary bond shall, except as to amount, be in the form above set out, and shall be certified by the Trustee.

AND WHEREAS, The Railroad Company, in accordance with the resolutions of its stockholders and board of directors, it in that behalf enabling, and of all and every legal power and authority in it vested, proposes to make, execute, and issue bonds or obligations, to be secured hereby, to the amount heretofore mentioned;

NOW THIS INDENTURE WITNESSETH, That the Railroad Company, as well in consideration of the premises and for the purpose of securing the payment of the principal and interest of the said bonds when and as the same shall become due and payable according to the tenor and effect of the said bonds so to be made and executed, from time to time, for a sum not exceeding in the aggregate three million seven hundred and fifty thousand dollars, together with the interest that will accrue thereon (both the said principal and interest being payable in gold), and taxes upon the said principal and interest of said bonds, as of the sum of one dollar lawful money of the United States, unto it well and truly paid by the said Girard Life Insurance, Annuity and Trust Company of Philadephia at the time of the execution hereof, the receipt of which is hereby acknowledged has granted, bargained, sold, assigned, set over, released, conveyed, and confirmed, and by these presents, in pursuance and execution of the power in it in anywise vested and in this behalf enabling, does grant, bargain, sell, assign, set over, release, convey, and confirm unto the said Girard Life In-

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surance, Annuity and Trust Company of Philadelphia, as Trustee aforesaid, and to its lawful successors or successor in the trusts hereby created, and their heirs, executors, administrators, and assigns forever:—

All and singular the entire line of railroad of the Railroad Company, as the same is now located and constructed, or may hereafter be located and constructed, beginning at a point upon the west bank of the Mississippi River, in or near Hopefield, in the county of Crittenden, State of Arkansas, to a connection on the boundary line between Arkansas and the Indian Territory with an extension of the line of railroad of the Choctaw, Oklahoma and Gulf Railroad Company (consisting of the railroad and its appurtenances, formerly of the Little Rock and Memphis Railroad Company, running from a point in or near Hopefield to Little Rock, and the extension to be hereafter built from Little Rock to a connection with the line of railroad of the Choctaw, Oklahoma and Gulf Railroad Company), including all the roadbed, superstructure, rights of way, side tracks, sidings, lands, real estate, rails, tracks, bridges, viaducts, buildings, depots, station houses, car houses, engine houses, warehouses, turntables, water stations, fences, structures, erections, fixtures, and appurtenances belonging to said mortgaged railroad, or in any wise appertaining thereto, and all other things of whatever kind belonging to said mortgaged railroad, or in any wise appertaining thereto, or which have been or shall be by said Company acquired or provided for or used on or in connection with the said mortgaged railroad hereinbefore designated, and all locomotives, engines, cars, and other rolling stock, equipment, machinery, tools, instruments, implements, material, furniture, and other property, both real and personal, of every kind and description, appertaining thereto, whether now belonging thereto, or hereafter to be acquired for use thereon, and all the corporate rights, privileges, and franchises appertaining to said mortgaged railroad, whether now owned or hereafter to be acquired, and also all the rents, issues, tolls, and other income of said mortgaged railroad hereinbefore described, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, and the reversion or reversions, remainder or remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, possession, claim, and demand whatsoever, at law or in equity, of the Railroad

Company, of, in, and to the same and every part thereof, together with and including all and singular the connections formerly of the Little Rock and Memphis Railroad Company with the Cairo and Fulton Railroad or the St. Louis, Iron Mountain and Southern Railroad, and the Little Rock and Fort Smith Railroad, and any railroad, depots, or rights of way in the city of Memphis, State of Tennessee, which the said Little Rock and Memphis Railroad Company owned at the date of the sale under the decree of the United States Circuit Court, and which were acquired and purchased at said sale, and all corporate and other rights, privileges, appurtenances, and franchises of the Railroad Company, acquired or to be acquired, connected with or relating to the mortgaged premises, and all rights of user or movement over the railroad bridges now or hereafter constructed across the Mississippi and Arkansas Rivers, including the franchise to survey, locate, construct, maintain, use, and operate the railroad and telegraph lines above described, and all the estate, right, title, interest, property, claim, and demand of every nature and kind whatsoever of the Railroad Company, as well in law as in equity, of, in, and to the same and every part and parcel thereof, together with all the streets, ways, passages, waters, water courses, easements, rights, liberties, privileges, hereditaments, and appurtenances whatsoever unto any of the hereby granted and mentioned premises and estates belonging or appertaining, or hereafter to belong or appertain thereto, and the reversions and remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, property, claim, and demand of every nature and kind whatsoever of the said Railroad Company now owned or possessed, or that may hereafter be acquired, as well at law as in equity, of, in, and to the same and every part and parcel thereof.

To have and to hold all and singular the above mentioned and described premises, together with the appurtenances, unto the said The Girard Life Insurance, Annuity and Trust Company of Philadelphia, Trustee, and its successors and assigns forever: In trust, nevertheless, for the equal security and benefit of all and every the persons or bodies corporate who or which shall be or at any time become the holder or holders of any such bonds or the interest warrants appertaining thereto, without preference

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to the holders of any of the said bonds or interest warrants over any of the others by reason of priority in the date thereof, or the time of issue or negotiation thereof or otherwise, upon the following trusts, conditions, covenants, and agreements, to wit:—

FIRST.—The bonds which shall be executed and issued by the said party of the first part, under the provisions of this instrument and therein recited, shall be delivered to said Trustee, to be certified by it, and no bond shall be valid or binding or be benefited by the provisions hereof unless the same shall be certified by the said Trustee in the form aforesaid, and the said Trustee shall not at any time certify or allow to be issued any bonds in excess of the rate of twelve thousand five hundred dollars for each mile of road actually constructed.

SECOND.—Bonds at the rate of twelve thousand five hundred dollars per mile may be issued forthwith upon the rail-railroad now constructed and equipped ready for operation between Memphis and Little Rock, and thereafter at a rate not exceeding twelve thousand five hundred dollars for each and every mile of railroad of main line which may be constructed and equipped ready for operation and may which be covered by or subjected to the lien of this mortgage: PROVIDED, HOWEVER, That the excess of bonds over one million two hundred thousand dollars issuable on the mileage to Little Rock shall not be issued until after at least two hundred thousand dollars shall have been expended for improvements and betterments on the railroad and other property formerly of the Little Rock and Memphis Railroad Company, and the written certificate to that effect, under the hands and seals of the president and treasurer of the Railroad Company, shall have been furnished to the Trustee. It shall be competent for the said Railroad Company to make and execute a single manuscript bond in the amount of one million two hundred thousand dollars, par value, and otherwise substantially of the tenor of the foregoing form of bond, which may be issued forthwith as a temporary substitute for twelve hundred bonds of one thousand dollars each of the form and class hereinbefore provided, and shall be retired and canceled as soon as the said twelve hundred bonds are engraved and duly executed and delivered.

THIRD.—Upon the delivery of the said certificate, showing the expenditure of the said sum of two hundred thousand dollars for the purposes specified, the Railroad Com-

pany shall be entitled to receive, and it shall be the duty of the Trustee to certify and deliver, the additional bonds necessary to make up the stipulated amount at the rate of twelve thousand five hundred dollars for the mileage between Memphis and Little Rock, and as the work of construction shall proceed, the Railroad Company shall be entitled to receive, and it shall be the duty of the Trustee to certify and deliver, bonds at the rate of twelve thousand five hundred dollars per mile for every mile of completed road, but only upon the completion of sections of not less than twenty-five miles: PROVIDED, HOWEVER, that from and out of every twelve thousand five hundred dollars of bonds so to be issued upon new mileage, bonds to the amount of two thousand dollars per mile shall only be available to the Railroad Company for the purpose of acquiring rolling stock and equipment for the operation of said railroad, and shall only be issued and delivered by the Trustee upon certificates from the president and treasurer of the Railroad Company that it has acquired, free from other lien, rolling stock and equipment equal in cost to the par value of the bonds called for.

FOURTH.—When notified of the completion of any section of the extension of the said railroad between Little Rock and the point of connection with the Choctaw, Oklahoma and Gulf Railroad, it shall be the duty of the Trustee, at the expense of the Railroad Company, to select and appoint a railroad engineer of approved character as an expert to examine and report upon the completion of the section or sections upon which bonds are to be issued, and the said bonds shall only be certified upon receiving a certificate from such expert that the section or sections of the said railroad have been constructed and completed in a good, thorough, and workmanlike manner, and equal in every respect to the present existing line of the Choctaw, Oklahoma and Gulf Railroad Company; and the Trustee shall be justified in accepting such certificate as conclusive evidence of the facts therein stated, and having received the opinion of counsel that such certificate complies with the terms of this article, shall not be made liable in any court of law or equity for any action in good faith taken thereunder: PROVIDED, HOWEVER, That the Railroad Company shall furnish to the Trustee an affidavit made by its president, treasurer, or chief engineer, stating that the cost of the construction of the section upon which bonds have been

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last certified and delivered has been in fact fully paid, excepting the usual percentages retained pending the completion of the entire road as a guarantee of the completion of the same, before the Trustee shall certify and deliver bonds based upon the construction of a succeeding section.

FIFTH.—The actual possession, occupation, and management, and the use and control of the said railroad, and of all the appurtenances thereof, shall remain and lie with the said party of the first part, without molestation or interference by or from the parties of the second part, or their successor or successors in the said trust, until default be made in the payment of the principal of the said bonds, or some of them, or until default be made in respect to something herein required to be done by the said party of the first part; and until such default be made as aforesaid the said party of the first part shall take and use all the earnings, incomes, profits, rents, tolls, and issues of the premises, and dispose of the same in any manner not inconsistent with the terms of this instrument.

SIXTH.—And the said Railroad Company in consideration of the premises, covenants, promises, and agrees:—

I. That having possession, as aforesaid, it shall and will well and truly pay off and discharge, or cause to be paid off and discharged, each and every tax, assessment, or other liability and governmental charge which may, from time to time, be lawfully levied or imposed by competent authority upon the said railroad property and premises, or upon any part thereof, the lien whereof might or could be held to be superior to the lien of these presents, so that the priority of these presents shall at all times be duly maintained and preserved.

II. That it shall and will well and truly pay, or cause to be paid, to the holders of the bonds to be issued hereunder, any every one of them, the principal and interest to grow due thereon respectively at the times, at the rate, and in the manner mentioned therein, and the coupons thereto belonging, according to the true intent and meaning thereof, and without deduction from either said principal or interest for any tax or taxes which by any present or future laws may be payable for or in respect of the said principal or interest for national, State, or municipal purposes; the Railroad Company hereby agreeing to pay any such tax or taxes which it may now or hereafter be required by any such law to retain therefrom.

Petitioner's Exhibit 1D.

And in case of default of such payment by said Railroa Company, from any cause whatever, the company furthe hereby covenants, promises, and agrees that it shall not an will not at any time hereafter insist on, or plead in any ma ner whatever, claim, or take the benefit or advantage of an stay or extension law which may now or at any time here after be in force, in any locality where the railway propert and premises hereby conveyed, or intended so to be, or an part thereof, may or shall be situate; or claim, take, or in sist on the benefit or advantage to be derived from any law now or hereafter in force, as aforesaid, providing for th valuation or appraisement of said railway property o premises, or any part thereof, prior to any sale or sale thereof to be made pursuant to the provisions hereinafte contained, or the decree of any court of competent jurisdi tion; or after any such sale or sales, claim or exercise an right which it may now or hereafter have, by statute enacte by any State wherein the said railway property or premise or any part thereof, shall or may be situate, to redeem th property so sold, or any part thereof; and said compan hereby expressly waives all benefit and advantage that might or could derive by virtue of any such law or law and agrees not to hinder, delay or impede the execution b said Trustee of the power of entry and sale hereinafter con ferred upon, granted, and delegated to it, but to suffer an permit the execution of such powers, as if such laws had no been made or enacted.

III. And the Railroad Company further covenant promises, and agrees to and with the said Trustee, its suc cessor or successors in this trust, on behalf and for the bene fit of the bondholders intended to be secured hereby, that shall and will file with the said Trustee copies of the ma showing any change in the line of the completed road be tween Little Rock and Memphis and the route of the ex tended line between Little Rock and the Indian Territory and that as and when it shall have hereafter definitely lo cated and constructed, ready for use and operation, an part or portion or section of its railway line or lines on o along the route or routes hereinbefore described, or whic it may hereafter acquire, or any thereof, or any part there of, and on account whereof bonds secured hereby shall b issued, it shall and will file with the said Trustee a line map thereof, showing the location thereof, in such con venient details as may be required, and by an instrument i

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writing and under seal, specifically describing the same, acknowledge, admit, and declare the same to be part and parcel of the railway, property, and premises hereby conveyed, or intended so to be, and subject to the operation of these presents and the lien hereby created: PROVIDED, That no failure of the Railroad Company so to do, or of said Trustee to demand the performance, shall in anywise affect or impair the operation of these presents thereon, in the same manner and to the same extent as if the same had been thus specifically described herein in case any bonds secured hereby shall have been issued for or on account thereof, it being the true intent and meaning of this indenture that the title to any substituted or extended right of way and all constructions and improvements thereon shall vest in the Trustee, and become part of the security hereunder so soon as the same shall have been acquired for the uses of the said railroad, and further, that it shall and will, from time to time, and at all times hereafter, upon reasonable request, make, do, execute, acknowledge, and deliver all such further acts, deeds, conveyances, and assurances in the law for the better carrying out the purposes hereof, and assuring unto the said Trustee, its successor or successors in the trust hereby created, upon the trusts and further purposes herein expressed or intended, all and singular the lands, premises, property, railroad, equipment, and appurtenances, leaseholds, rights, interests, and effects hereby conveyed in trust, or agreed or purporting or intended so to be, whether now owned or possessed by or vested in the said Railroad Company, or subsequently to be acquired by or vested in it, or which it claims to own and be possessed of, and all other property and things whatsoever which may be hereafter acquired, in aid of or by way of substitute for, or for use for the purposes of the same or any part thereof, and all franchises and claims to franchises now held, or hereafter acquired, relating thereto, as by the Trustee or bondholders, or by counsel learned in the law, shall be reasonably desired, devised, advised, or required; and the Railroad Company shall and will furnish to the said Trustee from time to time, but not oftener than once in each year, upon their reasonable request, in writing, a full and true inventory of all the movable property appertaining to the said railway, and the operation thereof, which is transferred or agreed or intended to be transferred by this indenture, and also copies

of the annual reports, and of all laws affecting the company, and judicial decisions affecting its railway and franchises; but no default to demand or to furnish such inventory shall impair the operation of this indenture upon any or all of the property agreed to be transferred, or intended so to be; and also to make and execute, under its corporate seal, acknowledge and deliver all such further deeds, conveyances, and assurances in the law, for the better vesting in and assuring to said Trustee the railroad, property, and premises, rights, powers, privileges, and franchises hereby mortgaged.

SEVENTH.—In case default shall be made by the Railroad Company in the payment of any interest on any of the bonds which may at any time have been issued and be outstanding and secured by these presents according to the tenor and effect of such bonds and the coupons thereto annexed, and if such default in the payment of such interest shall continue for the period of three months, or in case default shall be made by the Railroad Company in the payment of the principal of any of such bonds when and as the same, according to the terms thereof, shall mature; or in case default shall be made by the Railroad Company in the payment of any tax, assessment, or other governmental charge lawfully levied and imposed upon the said railway property and premises, or any part thereof, and such default shall continue for the period of three months after such tax, assessment, or other governmental charge shall have become due and payable; or in case default shall be made by the Railroad Company in the due observance and performance of any of its covenants, promises, and agreements herein contained, and either of such last-mentioned defaults continue for the period of three months after notice in writing from the Trustee of the same, then and in each and every such case of default continued as aforesaid, it shall be lawful for said Trustee, personally, or by its agent or agents, attorney or attorneys, to enter into and upon all and singular the railway property and premises, lands, rights, interests, and franchises hereby conveyed or intended so to be, and each and every part thereof, and to exclude the Railroad Company, its agents and servants, wholly therefrom, and having and holding the same, to use and operate, manage, and control said railway, regulate the tolls for the transportation of passengers and freight thereon, and con-

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duct the business thereof, either personally or by its superintendent, managers, receivers, agents, and servants or attorneys to the best advantage of the interests as well of the public as of the holders of bonds secured hereby in accordance with law and any statute relating to said railway or any part thereof, or to the operation thereof; and upon such entry it shall be lawful for the said Trustee from time to time to insure or keep insured, at the expense of the trust estate, the rolling stock, tools and machinery, and other property, buildings, bridges, and structures erected or provided for use in connection with said railway, and whereof they shall become possessed as aforesaid in the same manner and to the same extent as is usual with railway companies; and likewise to make from time to time, at the expense of the trust estate, all necessary or proper repairs, renewals, and replacements, and useful alterations, additions, betterments, and improvements thereto and thereon, as well in respect of the rolling stock or equipments as in respect of the railway and appurtenances and other subject matters as may seem to them judicious; and to collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and every part thereof, and after deducting the expenses of operating said railway and conducting the business thereof, and of all repairs, renewals, replacements, alterations, additions, betterments, and improvements, and all payments which may be made for taxes, assessments, insurance, and other proper charges upon the said premises and property, or any part thereof, as well as a just and reasonable compensation for their own services and compensation to all agents, clerks, servants, and other employees by them properly engaged and employed, the said Trustee shall apply the moneys arising as aforesaid to the payment of the interest in arrear (if any), or which shall after such entry become due and payable on the bonds outstanding and secured hereby, in the order in which such interest shall become due, ratably to the persons or parties holding the coupons therefor, or entitled to receive the same, without any discrimination or preference between them. And in case of any such default or defaults as are in this article heretofore expressed, it shall and may be lawful for the said Trustee, either before or after entry upon the said railroad and property, to apply to any court or courts of competent jurisdiction for the appointment of a receiver or receivers

to take charge of and operate the said railroad, with power in said receiver and receivers to do and perform all matters and things touching the possession, maintenance, and operation of said road, the collection and disbursement of the income therefrom, and the application of the net balance of the same as are heretofore specifically and in detail set forth in the case of an entry by the Trustee and the operation of a railroad thereunder; and this article shall be deemed and taken to be an assent by the Railroad Company to the appointment of a receiver or receivers as aforesaid, in case application therefor shall be made hereunder by the Trustee.

EIGHTH.—In case default shall be made by the Railroad Company in the payment of any interest on any of the said mortgage bonds which may at any time have been issued and be outstanding and secured by these presents according to the tenor and effect of such bonds, and the coupons thereto annexed, and if such default in the payment of such interest shall continue for the period of three months after maturity and demand for such payment, then and in such case of default continued as aforesaid, or in case the Railroad Company makes like default in failing to keep or perform any of the covenants and conditions in this indenture contained, and such default continues three months after notice thereof in writing from the Trustee, the Trustee shall, upon the request in writing of one-third in interest of the bonds hereby secured and then outstanding, declare the principal of all of said bonds immediately due and payable, and thereupon the said principal shall become and be immediately due and payable, anything herein or in said bonds contained to the contrary thereof in anywise notwithstanding.

This provision, however, is subject to the condition that at any time after the principal of said bonds shall have been so declared due and payable, the holders of a majority in amount of the bonds hereby secured then outstanding, by written notice to the Railroad Company and to the Trustees may waive such default and its consequences, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon. In case the Trustee shall have proceeded to enforce any right under this indenture by foreclosure, entry or otherwise, and such proceeding shall have been discontinued or abandoned because of such

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waiver or for any other reason, or shall have been determined adversely to the Trustee, then and in every such case the Railroad Company and the Trustee shall be restored to their former position and rights hereunder in respect of the mortgaged premises, and all rights, remedies and powers of the Trustee shall continue as though no such proceedings had been taken.

NINTH.—In case default shall be made by the Railroad Company in the payment of the principal of any of the said bonds when the same shall become and be due as therein or hereinbefore provided, and in each such case of default it shall be lawful for the said Trustee, after entry as aforesaid, or other entry, or without any entry, personally or by its attorneys or attorney, agents or agent, to sell and dispose of all and singular the railway property and premises, rights, franchises, and interests, lands, and appurtenances, hereby conveyed or intended so to be, or from time to time as they shall deem proper, of so much thereof as may be sold separately without material injury to the parties interested, and be sufficient to pay the amount due on such bonds then outstanding, for principal and interest, according to the terms thereof, together with the costs and expenses of such sale, and of all right, title, and interest, claim, and demand whatsoever, benefit, equity of redemption, and statutory right to redeem of the Railroad Company, its successors and assigns, of, in, and to the same, or so much thereof as may be sold, and every part thereof, at public auction, at such place in the city of Philadelphia, or on the premises or any part thereof, and at such time and upon such terms as may be specified in the notice of sale to be given as hereinafter provided, for the highest and best price the same will bring in cash.

Preparatory to such sale the said Trustee shall give notice of the time and place, when and where, and the terms upon which the same is to be made, and containing a description of the property to be sold, by advertisement thereof in one newspaper at that time published in the cities of New York, Philadelphia, and Little Rock, once a week for six successive weeks; and upon any sale or sales under this instrument the said Trustee is hereby empowered to make, execute, and deliver to the purchaser or purchasers at any such sale a good and sufficient deed, or good and sufficient deeds of conveyance, for the railway property and fran-

chises sold. In case of any sale or sales by virtue of any of the provisions of this instrument, the Railroad Company hereby expressly and absolutely agrees to waive, and hereby irrevocably waives, the benefit or advantage of any and all valuation, stay, appraisement, or extension laws, and any statutory right to redeem, now existing, or which may hereafter be in force, in the State or States, wherein the property to be sold under this instrument, or any part thereof, may at the time of the sale be situate, or where the sale may take place, which, but for this provision, agreement, and waiver might be operative, in respect of any such sale, or might be availed of to prevent or postpone an absolute or immediate sale under the provisions of this instrument, or to redeem after any sale the property sold thereat, or any part thereof; and it is likewise expressly declared that any sale or sales made by said Trustee, under or by virtue of this instrument, when completed, shall operate to divest all title, rights, and interest, claims, and demands whatsoever, both at law and in equity, of the Railroad Company of, in, and to the rights, property, powers, privileges, and franchises sold, and shall be a perpetual bar, both at law and in equity, against the Railroad Company, its successors and assigns, and any and all persons whomsoever claiming or to claim the railroad property, rights, powers, privileges, and franchises sold, or any part or parcel thereof, by, from, through, or under it, the Railroad Company, its successors and assigns, or any of them. And the said Trustee shall apply the proceeds or avails of any sale to be made under the provisions of this instrument, and the purchase money paid thereon, after deducting therefrom just allowances for all expenses connected therewith, including attorney and counsel fees, as well as any and all advances, expenses, and liabilities which may have been made or incurred by said Trustee in using, operating, maintaining, and preserving said railroad property and premises, or in carrying on and managing the business for the period the same may have been in the said Trustee's possession, or in arranging for making and completing the sale and payments for taxes, assessments, or other charges or liens prior to the lien of these presents, if any such there shall then be, and the said railway property and premises, or any part thereof, shall not have been sold subject thereto, as well as just and reasonable compensation for the said Trustee's own services, to the payment of the principal of such of said bonds as may

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be at that time outstanding, and of the interest which shall have accrued upon the said principal up to that time, according to the tenor thereof, without discrimination or preference as between principal and interest, but ratably to the aggregate amount of such principal and accrued interest; it being understood and hereby declared and agreed that such payment shall be made to the persons holding the bonds and coupons evidencing the right to such principal and interest, without discrimination or preference between them, and if, after payment in full of all the said bonds, principal and interest, a surplus of the said proceeds of sale shall remain, the said Trustee shall pay over such surplus to the said company, its successors or assigns, or as any court of competent jurisdiction shall lawfully direct.

And it is hereby declared and agreed that the said Trustee may, from time to time, adjourn any sale to be made under the provisions of this instrument, by announcement made at the time and place appointed for such sale, and if so adjourning such sale, may make the same at the time and place to which the same shall be so adjourned, and without further notice thereof.

And it is further declared and agreed that the receipt of the Trustee shall be a sufficient discharge to the purchaser or purchasers of the property, which shall be sold as aforesaid for his or their purchase money, and that such purchaser or purchasers, his or their heirs, executors, or administrators shall not, after paying such purchase money and receiving such receipt, be liable to see to the application of such purchase money upon or for the trusts or purposes of these presents, or be in any manner whatsoever answerable for any loss, misapplication, or non-application of any such purchase money, or any part thereof.

And it is further agreed that no part of the premises hereby mortgaged, or intended so to be, shall be sold under proceedings at law, by the holder or holders of all or any of the bonds intended to be hereby secured, it being the intention and agreement of the parties, for the better securing the largest possible price for the mortgaged premises in the event of a sale thereof, that the same shall only be sold in the manner herein provided or under proper proceedings, either at law or in equity, by the Trustee for the enforcement of the rights of all holders of bonds issued hereunder.

Petitioner's Exhibit 1D.

TENTH.—It is hereby mutually agreed that at any public sale of the railway property, premises, rights, privileges, and franchises hereinbefore conveyed, made by virtue of the powers herein granted, or by judicial authority for the purpose of enforcing the lien of these presents, the Trustee under these presents for the time being may, in its discretion, and not otherwise, bid for, and if the same be obtainable at the price hereafter mentioned, purchase and acquire the property so offered for sale, in behalf of all the holders of bonds secured by this instrument, which shall then be outstanding, in proportion to the amount of said bonds, and of the overdue coupons thereunto belonging, by them respectively held: PROVIDED, HOWEVER, That nothing herein contained shall authorize the said Trustee to bid, on behalf of the holders of said bonds and coupons, a sum exceeding the whole amount of said bonds then outstanding, with the interest thereon, according to the tenor thereof, and the costs and expenses of such sale for the entire property then held upon the trusts of this indenture, or any amount reasonably proportionate thereto, for any part of the said property.

And it is further agreed that the mortgage bonds and overdue coupons aforesaid shall be received in payment of the purchase money of any property sold by virtue hereof, as equivalent to so much in cash of the said purchase money as would be distributable and payable thereon.

ELEVENTH.—Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the Trustee and of the bondholders under these presents, or the return of "no property found" upon any execution or decree of any court of record within the State of Arkansas for a payment of money, the said Trustee shall be entitled to exercise the right of entry herein conferred, or to the appointment by any court of competent jurisdiction of a receiver or receivers of the property hereby mortgaged, or of the earnings, revenue, rents, issues, or profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

TWELFTH.—No delay or omission of the said Trustee or of the holders of bonds secured hereby in respect of any default happening, and continuing as aforesaid, to exercise the rights and powers arising therefrom as hereinbefore provided, shall be held to exhaust or impair such rights and powers, or be construed to be a waiver of such defaults.

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Petitioner's Exhibit 1D.

THIRTEENTH.—The Railroad Company may at any time hereafter and before the full payment of the bonds secured hereby, and whenever it shall deem it expedient for the better security of the said bonds, although there may not then have occurred any such default as to entitle the said Trustee to enter into possession under article four hereof, surrender and deliver to said Trustee full possession of the whole or any part of the said railway property and premises, rolling stock, lands, and appurtenances, rights, franchises, and interests hereby conveyed or intended so to be, for any term or terms, certain or indefinite. The said Trustee, upon such surrender and delivery, may at its option enter into and upon the premises so surrendered and delivered, and take and receive possession thereof, for such term or terms, certain or indefinite, as aforesaid, without prejudice, however, to its rights at any time subsequently to insist upon and maintain such possession, though beyond such term, whenever they would have been entitled thereto had no such voluntary surrender been made.

And upon the voluntary surrender and delivery of the said railway property and premises, or any part thereof, as herein provided, the said Trustee shall and will during the term or terms for which possession shall be taken, and while said property and premises shall remain in its possession, work, use, manage, control, and employ the same, in accordance with the provisions of article four of these presents, and receive the incomes and revenues thereof, and apply the same to the best advantage of all parties in interest.

FOURTEENTH.—The Railroad Company covenants and agrees that it will at all times until the said bonds secured hereby shall have been paid in full, principal and interest, keep and maintain an office or agency in the city of New York, and an office or agency in the city of Philadelphia, where the bonds of this issue may be registered, and for the payment of interest on said bonds, and the presentation and offer to surrender any coupon, and any demand for the payment of interest on any of said bonds made at the said office or agency in the city of New York or in the city of Philadelphia, shall be a sufficient demand for all purposes and shall have in all respects the same force and effect as if such coupons had been presented, or such demand made at the principal office of the Railroad Company in the State of Arkansas.

Petitioner's Exhibit 1D.

FIFTEENTH.—And it is further mutually agreed that the Railroad Company keeping a register or registers of bonds issued hereunder as hereinbefore covenanted and agreed, any holder or holders of any of the bonds issued under the provisions hereof may register his or their bond or bonds upon presenting the same, and signing his name or their names upon such register and a transcript therefrom and that when a bond shall be so registered the person or persons in whose name or names the same shall be registered, shall be deemed and regarded as the owner or owners thereof for all purposes, and payment of or on account of the principal sum of such registered bond mentioned, shall thereafter be made to such person or persons, his or their order only, and all such payments so made shall be valid and effectual to satisfy and discharge the liability upon such bond to the extent of the sum or sums so paid, provided that such registry may be changed, and the bond so registered be transferred, upon presentation with the written order of the person or persons in whose name or names the same shall stand registered, properly authenticated, to the person or persons whose names or names shall in such written order be contained to that end; and thereafter the person or persons to whom such bond shall have been so transferred as aforesaid shall be held to be the owner or owners thereof with all the incidental rights and powers and such transfers may be made from time to time as the registered owner or owners of any of such bond for the time being may direct as aforesaid; and the registered owner or owners shall also have the right to register any of the bonds registered in his or their names, as payable to bearer, in which case the transferability by delivery shall be restored and the principal thereof be payable to the person presenting the same. But any holder or holders of a bond registered to bearer may again cause such bond to be registered in his name or their names with the same effect as the first registration, and successive registrations as aforesaid may be made from time to time as desired.

SIXTEENTH.—No bondholder or bondholders shall take, begin, institute, or prosecute any proceeding or proceedings to enforce the provisions hereof or to foreclose this mortgage until after he or they shall have requested the Trustee in writing to take, begin, or institute such proceeding or proceedings and offered proper indemnity as herein

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before provided, and such Trustee shall have thereupon refused to take such proceeding or proceedings. The Trustee shall have the right to require the person or persons presenting any request mentioned or provided for in this mortgage to furnish proof by affidavit or affidavits of the signers as to the ownership of the bonds represented by him or them, and of his or their authority to subscribe such request in case the same shall be subscribed by any other person than the owner; and if such proof be so required, the said request shall be without effect until such proof shall have been furnished to the Trustee.

SEVENTEENTH.—The Trustee shall have full power, in its discretion, and upon the written request of the Railroad Company, at any time when it shall not be in default in respect of payment of interest upon, or principal of, any outstanding bonds secured hereby, to release from the lien and operation of this trust deed and of the said bonds, unto the Railroad Company, or to persons by it designated therefor, any portion or portions of the premises acquired, held, or used by the Railroad Company for the purpose of stations, depots, shops, or other buildings or erections or other uses connected with the maintenance and operation of the railroad or any parts thereof, or which may have been acquired or held for the supply of gravel, fuel, and other materials, for the purposes of said railroad or any part thereof, which, in the judgment of the Trustee, based upon a resolution of the board of directors of the Railroad Company, or upon such other evidence that may be satisfactory to it, shall, at the time of such release, be no longer requisite for use for the purposes for which the same shall have been so acquired or used, nor necessary or expedient to be retained for use in connection with the said railroad on or along the routes aforesaid, or any of them, and likewise any parts of the original line of track or roadway, and of the depot grounds, buildings, or accommodations connected therewith, which may have been thrown out of use, and ceased to form part of the railroad, at the time of such release: PROVIDED ALWAYS, That the power of release given by this article is designed to be exercised only in case of the Railroad Company's selling or contracting to sell the the property so to be released, because of its being no longer required for the uses or purposes of the Railroad Company, and requiring the same to be so released, in order

to give a perfect title to the purchaser or purchasers: AND PROVIDED FURTHER, That where such released premises shall have been thrown out of use, or ceased to be required, by reason of changes of the line of the road, on or along the routes aforesaid, or any of them, or change of depot grounds, buildings, or other accommodations, the consideration money received shall be expended upon the mortgaged premises or the substitutes which the Railroad Company shall have acquired therefor shall be conveyed by appropriate deeds to the Trustee upon the trusts and for the purposes of this indenture, before the giving of such release: AND IT IS FURTHER PROVIDED, That the Trustee shall also have full power to allow the Railroad Company, from time to time, to dispose of, according to its discretion, such portion of the rails, fastenings, machinery, equipments, and implements, at any time held or acquired for the use of the Railroad Company, as may have become unfit for such use, provided the same be replaced by new, which shall be conveyed to the Trustee, or be otherwise made clearly subject to the operation of these presents.

EIGHTEENTH.—The Trustees shall have full power, from time to time, to employ such clerks, agents, and assistants as it shall find necessary to enable it to discharge properly the duties devolving upon it under the provisions of this instrument, or manage the trusts hereby created, and shall be authorized to pay such reasonable compensation as it may deem proper to all such counsel, attorneys, agents, clerks, servants, and other employees, as it may so employ in and about the discharge of its duties hereunder; and it shall allow their accounts and any papers delivered to it by the Railroad Company under the provisions hereof, to be inspected at all reasonable hours by the properly authorized officer of the Railroad Company or by a committee or other agent, duly thereunto authorized by the holder or holders of bonds secured hereby to an amount not less than five hundred thousand dollars.

And it is further agreed that said Trustee shall be entitled to such just and reasonable compensation for all services which may hereafter be rendered by such Trustee in this trust (except in the exercise of the powers of entry and sale, and after voluntary surrender), to be paid by the Railroad Company as may be agreed upon between it and the

Railroad Company, or, on failure to agree, as may be fixed by any court of competent jurisdiction.

It is further agreed that the just and reasonable expenses of the said Trustee shall be paid by the Railroad Company, or out of the income of the property, from time to time as required.

And it is further agreed that in case said Trustee shall, at any time hereafter, exercise powers of entry hereinbefore conferred upon it, or accept voluntary surrender of the railway property and premises hereby conveyed, that then and in such case it shall be entitled to receive out of the current income such compensation from time to time for its services in regard thereto, as may be agreed upon between it and the Railroad Company and the holders of a majority in interest of said bonds, or, in the absence of any such agreement, as any court of competent jurisdiction shall determine. In case the said Trustee shall exercise the powers of sale hereinbefore conferred upon it, then it shall be entitled to receive such compensation for its services in respect thereof as may be proportionate to the number of sales made and the amounts realized thereat, and as the said Trustee and the holders of a majority in interest of the bonds secured hereby and the company may agree upon, or, in the absence of any such agreement, as any court of competent jurisdiction may determine: PROVIDED, That the consent of the company shall be required only in case the proceeds of the sale shall be sufficient to pay in full the principal and interest upon the bonds at the time outstanding. The said Trustee shall not be answerable for the default or misconduct of any agent or attorney who may be appointed by it in pursuance hereof, if such agent or attorney be selected with reasonable care, nor for anything whatsoever in connection with this trust, except willful misconduct or gross negligence. The said Trustee shall not be personally liable for any debts contracted by it, for damages to persons or property carried or injured, nor for salaries, nor for the non-fulfillment of contracts, during any period while said Trustee shall manage the trust property or premises upon entry or voluntary surrender as aforesaid, but all such debts and liabilities shall be and constitute a first and paramount charge upon the trust funds and property.

It is mutually agreed that the term or words "the Trustee," "said Trustee," and "the said Trustee," as used in

this indenture, shall be held and construed to mean th Trustee for the time being, whether original or new, an whenever a vacancy shall exist, to mean the continuin Trustee, and such Trustee shall, during such vacancy, b possessed of and be competent to exercise all the power by these presents granted to the parties of the second part

The Trustee shall be entitled to call upon the bond holders for indemnity from any expenses which may b necessary for the discharge of its duties as herein provide for, which there shall not be sufficient trust funds in it hands properly applicable to such expenses, and upon th failure of the Trustee to receive such indemnity, it ma decline to act in the premises except as Receiver, unde proper decree of a competent court.

And it is further mutually agreed, that the said Trus tee, or any Trustee or Trustees hereafter appointed, ma resign and be discharged of the trusts created by thes presents by giving notice, in writing, to the Railroad Com pany and to the bondholders, by publication thereof, a least twice a week, for six successive weeks, in a newspape published in the city of Philadelphia and in one newspape published in the city of New York, at least thirty days be fore such resignation shall take effect, and upon the du execution of the conveyance hereinafter required.

And it is hereby declared and agreed, that in case, at an time hereafter, the said Trustees, or any one of them, sha resign, or die, or become incapable or unfit to act in the sai trusts, the holders of the bonds secured hereby, acting b a majority in interest, shall be, and they are hereby, author ized and empowered, by an instrument or instruments i writing, under their respective hands and seals, duly ac knowledged as aforesaid, or by a vote, attested as aforesaid at a meeting of said bondholders duly convened as herei provided, to appoint a successor or successors to such Trus tee; and such successor or successors, when so appointed shall immediately upon its, his, or their acceptance of th trust, become vested with all the powers, authorities, an estates held or possessed by the Trustee to succeed whom it, he, or they shall have been appointed, without any fur ther assurance or conveyance; and thereupon all the power and authorities hereunder, and all the estate, right, titl and interest in the said premises, of the Trustee or Trustee

who shall have died, become incapable, or have resigned, shall wholly cease and determine; but, nevertheless, the Trustees or Trustee resigning or being removed, as aforesaid, shall, upon the request in writing, of the new Trustees or Trustee, execute and deliver to it, him, or them, all such conveyances and other instruments as shall be fit and expedient, for the purpose of assuring to such new Trustee or Trustees the legal estate in the premises: PROVIDED, The expense of the preparation and execution of such instruments be defrayed by the Railroad Company, or the said new Trustee or Trustees, or other parties in interest: AND PROVIDED FURTHER, That nothing herein contained shall be so construed as to deprive any Trustee or his representatives of any right to receive any compensation or reimbursement to which such Trustee may be or have become justly entitled, for any services actually rendered or expenses incurred under this instrument; but any such Trustee and his representatives shall at all times have a lien therefor upon all moneys, securities, and other trust property herein mentioned.

And it is further expressly understood and agreed that all the covenants, stipulations, promises, and agreements herein contained by or on behalf of said company shall bind and be binding upon its successors and assigns, whether so expressed or not.

NINETEENTH.—If the Railroad Company shall well and truly pay or cause to be paid all bonds to be issued under or entitled to the protection of this deed of trust, and the coupons attached thereto at the times and in the manner therein specified, and shall well and truly keep and perform all the things herein required to be kept and performed by it, according to the true intent and meaning of these presents, then, and in that case, all property, rights, and interests hereby conveyed shall revert to it, and the estate, right, title, and interest of the said Trustee aforesaid shall thereupon cease, determine, and become void; otherwise the same shall be, continue, and remain in full force and virtue.

IN WITNESS WHEREOF, The parties hereto have caused their respective corporate seals to be hereunto affixed and the same to be attested by the signatures of their respective presidents and secretaries, in pursuance of resolutions of

their boards of directors, the day and year first above written.

THE CHOCTAW AND MEMPHIS RAILROAD COMPANY,
By
FRANCIS I. GOWEN,
President.

Attest:
W. B. SMITH,
Secretary.

(SEAL)

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY OF PHILADELPHIA,
By
E. B. MORRIS,
President.

Attest:
WILLIAM N. ELY,
Secretary.

(SEAL)

And on the same day, to wit, the 14th day of April A. D. 1939, there was filed in the Clerk's office of said court a certain Petitioner's Exhibit 1F in words and figures following, to wit:

Filed April 14, 1939

Petitioner's Exhibit 1F.

AN INDENTURE, made and entered into this twenty-fourth day of March, in the year of our Lord one thousand nine hundred and four, by and between the CHOCTAW, OKLAHOMA AND GULF RAILROAD COMPANY, hereinafter called the lessor, party of the first part, and THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, hereinafter called the lessee, party of the second part.

WHEREAS, the lessor is a corporation organized and existing under the laws of the United States and owns and operates lines of railway in the States of Tennessee and Arkansas and in the Territory of Oklahoma and the Indian Territory; and,

WHEREAS, the lessee is a consolidated corporation organized and existing under the laws of the States of Illinois and Iowa, and owns and operates lines of railway in said States and in the States of Missouri, Nebraska, Kansas

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and Colorado, and in the Indian Territory and the Territory of Oklahoma; and,

WHEREAS, the said lines of railway of the lessor and of the lessee connect at the City of El Reno, Canadian County, Territory of Oklahoma, and are connecting and continuous railways:

Now, Therefore, this Indenture Witnesseth:

FIRST. The lessor, for and in consideration of the covenants and agreements hereinafter contained on the part of the lessee to be observed, kept and performed, has let, leased and demised, and by these presents does let, lease and demise, to the lessee, its successors and assigns, the following lines of railway:

(a) The railway tracks, terminals, property and appurtenances of the lessor in the City of Memphis, Tennessee, together with all ferries, inclines and other facilities for crossing the Mississippi River at said point;

(b) A line of railway extending from a point on the west bank of the Mississippi River at or near Hopefield, Crittenden County, Arkansas, opposite Memphis, Tennessee, by way of Little Rock, Pulaski County, Arkansas, to a point on the boundary line between the Territory of Oklahoma and the State of Texas, at or near Texola, Greer County, Oklahoma;

(c) The leasehold interest now or at any time during the term hereof held by the lessor in and to the railway of the White and Black River Valley Railway Company, extending from *(a)* Brinkley, Monroe County, Arkansas, to Jacksonport, Jackson County, Arkansas, and *(b)* from Wiville, Woodruff County, Arkansas, to Gregory, in said County;

(d) A line of railway extending from Little Rock, Pulaski County, Arkansas, to Hot Springs, Garland County, Arkansas, including all right, title and interest now or at any time during the term hereof held by the lessor in and to the use of the railway of the Little Rock, Hot Springs and Western Railroad Company from Little Rock, Pulaski County, Arkansas, to Benton, Saline County, Arkansas;

(e) A line of railway extending from Butterfield, Hot Springs County, Arkansas, to Malvern, in said County;

Petitioner's Exhibit 1F.

(f) A line of railway extending from Wilburton, Indian Territory, to Haileyville, Indian Territory;

(g) A line of railway extending from Haileyville Junction, Indian Territory, to Ardmore, Indian Territory;

(h) A line of railway extending from Tecumseh Junction, Pottawatomie County, Oklahoma, to Asher, on the Canadian River in said County;

(i) A line of railway extending from Geary, Blaine County, Oklahoma, through Woods County, Oklahoma, to Anthony, Harper County, Kansas;

(j) A line of railway extending from Ingersoll, Woods County, Oklahoma, to Alva, in said County;

And all other lines of railway owned, leased or operated by the lessor at the time of the execution and delivery of this indenture or at any time during the term hereof, including spurs and branches to coal mines, and all right, title and interest now or at any time during the term hereof held by the lessor in and to any other lines of railway in which the lessor, by lease, trackage agreement or operating contract, has any right, title or interest; all rights of way, stations, depot and terminal grounds, and all other lands and interests in land appertaining or to appertain to said lines of railway and each of them; all roadbeds, tracks, sidings, rails, ties, switches, bridges, piers, abutments, trestles, viaducts, culverts, turnouts, turntables, superstructures, fences, stations, warehouses, elevators, water stations, telegraph lines, and all other buildings, erections, fixtures, appliances and facilities, now owned or hereafter to be acquired by the lessor or hereafter added to said railways or any of them; all rolling stock and equipment of every description, including locomotives, cars and vehicles of every kind now owned or possessed, or which may hereafter during the term be acquired by the lessor; all tools, implements and machinery, instruments, furniture, safes, books, accounts and bills receivable, cash on hand, stocks, bonds, maps, field notes, surveys, charts, materials, supplies, personal property and claims or causes of action of every character now or hereafter during the term belonging or accruing to the lessor; together with all and singular the property, rights, privileges, franchises, tenements, hereditaments and appurtenances to the said railways and

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each of them belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and also all the estate, right, title, interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the lessor of, in and to the same and every part and parcel thereof, with the appurtenances, whether now held or hereafter acquired;

To have and to hold unto the lessee, its successors and assigns, for a term of nine hundred and ninety-nine (999) years beginning on the date hereof;

SUBJECT, however, as to the property embraced therein severally and respectively, to the lien thereon of the following mortgages and equipment trust agreements, to-wit:

1. Choctaw, Oklahoma and Gulf Railroad Company General Mortgage to the Girard Life Insurance, Annuity and Trust Company of Philadelphia as Trustee, dated October 3, 1894, securing an issue now outstanding of $5,500,000, face value, of five (5) per cent. bonds maturing October 1, 1919;

2. Choctaw and Memphis Railroad Company Mortgage to the Girard Life Insurance, Annuity and Trust Company of Philadelphia as Trustee, dated January 2, 1899, securing an issue now outstanding of $3,525,000, face value, of five (5) per cent. bonds maturing January 1, 1949;

3. Little Rock Bridge Company Mortgage to Girard Trust Company as Trustee, dated June 29, 1899, securing an issue now outstanding of $355,000 six (6) per cent. bonds maturing July 1, 1919;

4. Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage to Girard Trust Company as Trustee, dated May 1, 1902, securing an issue of five (5) per cent. bonds maturing May 1, 1952, authorized to be issued in the aggregate sum of $30,000,000, of which $5,411,000 are now outstanding;

5. Equipment Trust Agreement or Lease between Girard Trust Company and Choctaw, Oklahoma and Gulf Railroad Company, dated July 1, 1900, securing an issue now outstanding of $100,000 five (5) per cent. equipment trust certificates maturing, $50,000 October 1, 1904, and $50,000 October 1, 1905;

6. Equipment Trust Agreement or Lease between Clement B. Newbold, Girard Trust Company and Choctaw,

Oklahoma and Gulf Railroad Company dated May 1, 1901, securing an issue now outstanding of $650,000 of five (5) per cent. equipment trust certificates maturing in installments on the first day of February and of August in each year until and including the year 1908;

7. Equipment Trust Agreement or Lease between Edward B. Smith, Girard Trust Company and Choctaw, Oklahoma and Gulf Railroad Company, dated February 24, 1902, securing an issue now outstanding of $1,540,000 four and one-half (4½) per cent. equipment trust certificates maturing in installments on the first day of April in each year until and including the year 1910.

The lessee, its successors and assigns, yielding and paying therefor the sums hereinafter specified, and keeping and performing all and singular the covenants and agreements hereinafter set forth to be by the lessee observed, kept and performed.

SECOND. The lessee agrees to account to the lessor for all operations of the demised railways from the day of the date hereof until midnight of March 31, 1904, and does hereby assume the payment of all current and unsecured indebtedness of the lessor as of said March 31, 1904; in consideration thereof, the lessor does hereby irrevocably authorize the lessee throughout the term of this lease to exercise in respect of all stocks and bonds at any time during the term owned by the lessor all rights, powers and discretions which the lessor as such owner might or could exercise, including the right to sell, pledge or otherwise dispose of the same, and to devote the proceeds thereof to its own use, and to exercise such rights, powers and discretions in the name of the lessor, or in the name of the lessee; the lessor hereby irrevocably constituting the lessee, during the term of this lease, its lawful attorney, with full power of substitution and revocation, in the name and stead of the lessor, to execute and deliver all such instruments, proxies and powers as may, in the judgment of the lessee, be necessary or proper, and the lessor hereby ratifies and confirms all action which the lessee or any substitute may take or cause to be taken by virtue hereof. The lessor does further irrevocably authorize the lessee throughout the term of this lease to collect in the name of the lessor or otherwise and to retain for its own use, the interest on the bonds or other indebtedness from time to time during the

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term held by the lessor, or to which the lessor may be or during the term become in any manner entitled, and the dividends on all stocks from time to time during the term held by the lessor, or to which the lessor may be in any manner entitled, and the lessor will, at the request of the lessee, collect and forthwith pay over to the lessee all such interest and dividends.

THIRD. The lessor, reserving to itself all coal mines, coal leases and coal or mineral lands now or at any time during the term held, owned or acquired by the lessor, or in which the lessor has or may have any right, title or interest, covenants to and with the lessee that the same shall be maintained, improved and operated to the extent and in such manner as shall lawfully be required by the lessee, to the end that the business of the lessee as a common carrier may thereby be benefited and enlarged.

FOURTH. The lessee, in consideration of the premises, accepts under the provisions hereof the premises and property hereby demised for the term hereby granted, and covenants to and with the lessor to pay yearly and every year during the term hereby granted, by way of rental therefor, the sum of the following amounts:

(a) the sum of one dollar, lawful money of the United States, on the first day of January in each year;

(b) all taxes that may be imposed, assessed or levied upon the lessor or upon the demised premises and property, or any part thereof, or upon the earnings thereof, as the same shall become due and payable;

(c) all rentals or other compensations due or owing by the lessor under or by virtue of the provisions of any lease, trackage arrangement or operating contract under and by virtue of which the lessor has the right to use the railway, or any part thereof, of any other railway company;

(d) an amount equal to the interest accruing on the said $5,500,000 five per cent. General Mortgage bonds of the lessor, the said $3,525,000 five per cent. bonds of Choctaw and Memphis Railroad Company, the said $355,000 six per cent. bonds of Little Rock Bridge Company, the $5,411,000 Consolidated Mortgage five per cent. bonds of the lessor and all of

such Consolidated Mortgage bonds hereafter issued by the lessor at the request or with the consent of the lessee; such payments to be made by payment of said interest as it accrues to the holders of said bonds in accordance with the terms thereof and of the mortgages or deeds of trust securing the same;

(e) an amount equal to the interest on the aforesaid equipment trust certificates of the lessor, such payments to be made as they severally and respectively accrue, to the persons entitled thereto in accordance with the terms of said equipment trust certificates and of the respective agreements securing the same, severally and respectively.

FIFTH. The lessee covenants to and with the lessor as follows:

The lessee shall and will save harmless and indemnify the lessor from and against all causes of action, legal or equitable, arising by reason of the acts or neglect of the lessee, or of the failure by the lessee or any of its officers, agents or employes to fulfill any duty toward the lessor or toward the public or any person or persons whomsoever, which the lessor by reason of its ownership, or the lessee by reason of its occupancy of the demised premises, or otherwise, may owe; and shall and will at its own cost and expense, defend such actions which may be brought against the lessor, and shall pay all amounts which may be recovered therein against the lessor for or upon the said causes of action.

The lessee, will, during the term of this lease, keep and maintain the demised lines of railway of the lessor in good and proper condition for the passage thereover of both freight and passenger traffic, and shall and will keep and maintain in good repair, working order and condition the tracks, depots, terminal facilities and other demised property, using suitable materials for renewal of the same as renewal shall from time to time become necessary.

SIXTH. The lessor covenants to and with the lessee as follows:

The lessor shall and will maintain, renew and keep up during the term of this lease its corporate existence and organization so long as permitted by law so to do, and at all times and from time to time during said term, when re-

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quested by the lessee, shall and will put forth and exercise each and every corporate power and do each and every corporate act which the lessor now or at any time hereafter may lawfully put in force or exercise, to enable the lessee to enjoy and avail itself of and exercise every right, franchise and privilege hereby granted and the proper operation and management of the demised premises according to the terms of this lease, and shall not and will not commit or omit, or suffer or allow to be committed or omitted, any act whereby its corporate existence or powers may be annulled, abridged or affected.

The lessor shall and will from time to time and at all times hereafter at the request of the lessee, make, execute and deliver all such other and further instruments and assurances in the law for the better or more particular assuring of the demised premises upon the conditions aforesaid, according to the true intent and meaning of these presents, as by the lessee shall be reasonably advised or required.

SEVENTH. It is mutually covenanted as follows:

The lessee shall and will, at the determination of this lease, re-deliver and surrender up to the lessor the demised premises and property in good order and condition, ordinary wear and tear excepted, with such additions, alterations and improvements as shall have been made thereto, subject, however, to any then existing encumbrances created by the lessor or by the lessee upon the demised premises or any part thereof, or upon the lessee's interest therein, and upon payment by the lessor to the lessee of the then value, over and above any and all such encumbrances, of all such additions, alterations and improvements, including equipment.

If the lessee shall, at any time or times hereafter during the continuance of this agreement, omit or fail to make the payments hereinabove agreed to be made, or any of them, and such default shall continue for the space of three (3) months, or shall fail punctually and faithfully to observe, keep and perform any other of the covenants and agreements thereof, and such default shall continue for the space of three (3) months after service by the President of the lessor upon the President of the lessee of a written notice specifying such default and requiring the lessee to remedy the same, then, and in either of such cases, the lessor may at any time, either:

(a) proceed by proper action or actions in the proper courts, either at law or in equity, to enforce performance of such covenants by the lessee or to recover damages for the breach thereof; or

(b) by notice in writing determine this lease, and thereupon enter into and upon the demised property, and shall thenceforth hold, possess and enjoy the same free from any right of the lessee, or its successors or assigns, to use the demised premises for any purposes whatever; and thereupon any right, title and interest of the lessee to the use of the demised premises shall absolutely cease and determine as though this lease had never been made; but the lessor shall, nevertheless, have the right to recover from the lessee any and all amounts which under the terms hereof may be then due and unpaid for the use of the demised premises.

At any sale under foreclosure of this lease and of the rights, privileges and property of the lessee under this lease, in pursuance of any of its provisions, the lessor shall have the right to become the purchaser thereof free and discharged from all equity of redemption on the part of the lessee and from any and all claims of the lessee therein and thereto.

In no event shall the stockholders of the lessee or of the lessor be held to any individual liability as stockholders for any default, damages or other breach of obligation, whether of this lease or of any instrument made in pursuance thereof by either party thereto.

Nothing containing in this indenture shall prevent the consolidation or merger with or sale to the lessee of the railways and property of the lessor or of any other railway company, or any consolidation or merger of the lessee with any other corporation, or any conveyance, mortgage, transfer or lease by the lessee of its property, including its leasehold interest in the demised premises.

EIGHTH. Anything to the contrary in this indenture notwithstanding, this lease shall be subject to termination by the lessor or by Central Trust Company of New York, as trustee, or by any successor trustee, of that certain trust agreement dated May 1, 1902, between the lessee and said Central Trust Company of New York as trustee, securing an issue limited to $24,000,000 of the Four Per Cent. Gold

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bonds of 1902 of the lessee, upon the happening of an event of default as defined in section 2, Article Six of said trust agreement dated May 1, 1902.

Anything to the contrary in this indenture notwithstanding, this lease shall be subject to termination by the lessee in case the shares of stock of the lessee held by the Central Trust Company of New York under that certain trust agreement bearing date August 1, 1902, executed to said Trust Company by the Chicago, Rock Island and Pacific Railroad Company shall be sold because of any default by the Chicago, Rock Island and Pacific Railroad Company under said trust agreement dated August 1, 1902.

NINTH. Nothing in this indenture expressed or implied is intended or shall be construed to confer or to give to any person or corporation, other than the parties hereto, any right, remedy or claim under or by reason of this indenture, or of any covenant, condition or stipulation thereof; and all the covenants, stipulations, promises and agreements in this indenture contained shall be for the sole and exclusive benefit of the parties hereto.

The provisions of this Ninth Article shall not, however, be construed so as to limit or in any wise affect the rights in and by the Eighth Article of this indenture, given to Central Trust Company of New York, as trustee, or any successor trustee under the trust agreement between the lessee and said Central Trust Company of New York, dated May 1, 1902.

TENTH. All the covenants, stipulations and agreements in this indenture shall extend to and bind the successors and assigns of the parties respectively, by and to whom the same have been made.

IN WITNESS WHEREOF, each of the parties hereto has caused its corporate seal to be hereunto affixed and this lease to be signed by its president or vice-president, and its secretary or assistant secretary, the day and year first above written.

CHOCTAW, OKLAHOMA AND GULF
RAILROAD COMPANY,
By C. H. WARREN,
Vice-President.

[CORPORATE SEAL]
Attest:
GEO. H. CROSBY,
Secretary.

Petitioner's Exhibit 1R.

THE CHICAGO, ROCK ISLAND AND
PACIFIC RAILWAY COMPANY,
By ROBT MATHER,
Vice-President.

[CORPORATE SEAL]
Attest:
G. T. BOGGS,
Assistant Secretary.

Signed, sealed and delivered by Choctaw, Oklahoma and Gulf Railroad Company in the presence of
H. J. RENN
E. CHRISTIANSEN

Signed, sealed and delivered by The Chicago, Rock Island and Pacific Railway Company in the presence of
J. J. QUINLAN
FREDK. FLYNN

[Acknowledgments omitted in printing.]

And afterwards on, to wit, the 14th day of April, A. D 1939 there was filed in the Clerk's office of said Court certain Petitioner's Exhibit 1R in words and figures following, to wit:

Filed April 14, 1939

Petitioner's Exhibit 1R.

THIS DEED OF CONVEYANCE, made and executed by the CHOCTAW & MEMPHIS RAILROAD COMPANY, party of the first part, to and with the CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, party of the second part, this the 30th day of June, 1900:

WHEREAS, the party of the first part is a corporation organized and existing under the laws of the State of Arkansas, and owns and operates the railroad hereinafter described, and has, under the laws of said state, full power to sell and dispose of its said railroad, ways and rights of way, with the franchises thereto belonging, and all other property owned by it, to any railroad corporation organized under the laws of said state, or any other state or territory, upon such terms and conditions as may be agreed upon by the Board of Directors of said party of the first part and ratified by a two-thirds vote of the issued capital stock thereof; and,

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Petitioner's Exhibit 1R.

WHEREAS, the party of the second part is a corporation organized under the provisions of an Act of Congress entitled: "An Act to authorize the purchasers of the property and franchises of the Choctaw Coal and Railroad Company to organize a corporation, and to confer upon the same all the powers, privileges and franchises vested in the Company," approved the 24th day of August, 1894, and acts amendatory thereof, and has, under the Acts of Congress, as well as under the statutes of the State of Arkansas, full power to buy, lease, or otherwise acquire, the railroad of the party of the first part, with all the rights, privileges and franchises thereto appertaining; and,

WHEREAS, it was resolved by resolutions duly adopted by the Board of Directors of the party of the first part, at a meeting of said Board duly and lawfully convened at the general office of said party of the first part, in the City of Little Rock, Arkansas, on the 24th day of April, 1900, that said party of the first part would sell all of its railroad, rights of way and franchises, together with all property, real, personal and mixed, of every character, (except the lands acquired by the Memphis & Little Rock Railroad Company under the provisions of an Act of Congress entitled "An Act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point on the Mississippi opposite the mouth of the Ohio River, via Little Rock, to the Texas boundary, near Fulton, in Arkansas, with branches to Fort Smith and the Mississippi River," approved the 9th day of February, 1853, and an Act of Congress to revive and extend the provisions of the aforesaid Act, approved the 28th day of July, 1866, and not used in connection with the operation of said railroad, and the Steamer "General Pearson", used by the party of the first part as a transfer boat between the terminus of said railroad on the west side of the Mississippi River, at or near Hopefield, and the City of Memphis) and all rights and choses in action held and owned by it, to the party of the second part, in consideration of the sum of One Million, Six Hundred and Twenty-one Thousand Five Hundred Dollars ($1,621,500.00), in cash, and of the agreement and undertaking of the party of the second part to assume and pay a series of First Mortgage five per cent fifty year gold bonds issued, or that may hereafter be certified and issued under the terms and provisions of a mortgage or deed of

trust executed by the party of the first part to the Girard Life Insurance, Annuity & Trust Company, of Philadelphia, Pennsylvania, Trustee, as aforesaid, of all the property and franchises of the said party of the first part, including the railroad constructed and to be constructed by it, which instrument bears date the 2nd day of January, 1899, and is duly recorded in the Recorder's office in each of the several counties in and through which the line of said railroad is located; also, a series of Three Hundred and Seventy-five Thousand Dollars ($375,000.00) of First Mortgage six per cent twenty year gold bonds heretofore issued by the Little Rock Bridge Company, a corporation organized under the laws of the State of Arkansas, bearing date the ..... day of June, 1899, and secured by a mortgage or deed of trust executed by said Bridge Company to the Girard Trust Company, of Philadelphia, Pennsylvania, Trustee, of all the property and franchises of said corporation, including the bridge constructed by it across the Arkansas River, at the City of Little Rock, which mortgage or deed of trust bears date the 29th day of June, 1899, and is of record in the Recorder's office of Pulaski County, State of Arkansas, in Record Book of "Mortgages 74," at page 21, the payment of the principal and interest of each of said bonds being guaranteed by the written and printed guarantee of the party of the first part endorsed thereon, and also all other indebtedness or liability of every kind and character that may exist against the party of the first part, whether said indebtedness shall be due and payable at the date of the consummation of said purchase, or shall become due thereafter; and,

WHEREAS, it was likewise resolved, at a meeting of the Board of Directors of the party of the second part, duly convened at the general office of the said party of the second part, at the City of Philadelphia, State of Pennsylvania, on the 19th day of April, 1900, that it would purchase all of the aforesaid property, rights and franchises, and would pay, in consideration thereof, the sum of One Million, Six Hundred and Twenty-one Thousand Five Hundred Dollars ($1,621,500.00), in cash, and would assume and pay all liability and indebtedness of every kind and character owing or that might, at the consummation of said purchase, exist against the said party of the first part, including the First Mortgage bonds of the Little Rock Bridge Company, the payment of the principal and interest whereof is guaran

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teed by the party of the first part as hereinbefore recited, and the bonds issued or that may hereafter be issued under the provisions of a mortgage or deed of trust executed by the party of the first part to the Girard Life Insurance, Annuity & Trust Company, of Philadelphia, Pennsylvania, Trustee; and,

WHEREAS, the aforesaid action of the Boards of Directors of the parties of the first and second part, respectively, was duly ratified by a two-thirds vote of the issued capital stock of each of said corporations at meetings of the stockholders of the parties of the first and second part hereto, held respectively at the general offices of said parties, after sixty days notice of said meetings respectively had been given by advertisement in the manner prescribed in Chapter 130 of Sandels & Hill's Digest of the statutes of the State of Arkansas; and,

WHEREAS, at a meeting of the Board of Directors of the party of the first part, held at the general office of said party on the 27th day of June, 1900, a resolution was adopted authorizing and directing the Vice President and the Secretary of said party of the first part, to execute and deliver to the party of the second part, a proper deed of conveyance of all the property, franchises and rights of every kind and description owned and held by the party of the first part unto the party of the second part, upon the performance by said party of the second part of the terms of the aforesaid sale;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS: That the CHOCTAW & MEMPHIS RAILROAD COMPANY, the party of the first part hereto, in consideration of the premises, and of the payment to it of the sum of One Million, Six Hundred and Twenty-one Thousand Five Hundred Dollars ($1,621,500.00) by the CHOCTAW, OKLAHOMA & GULF RAILROAD COMPANY, the party of the second part hereto, the receipt whereof is hereby acknowledged, has this day granted, bargained and sold, and does by these presents grant, bargain, sell and convey unto the said party of the second part, its successors and assigns, all and singular the entire line of railroad of the party of the first part, beginning at a point upon the West bank of the Mississippi River, in or near Hopefield, in the County of Crittenden, State of Arkansas, to a connection on the boundary line between the State of Arkansas and the Indian Territory with the line of railroad of the party of the second part, consisting of the

railroad and appurtenances formerly of the Little Rock & Memphis Railroad Company, running from a point in or near Hopefield, in Crittenden County, to the City of Little Rock, and the extension thereof lately built by the party of the first part to the aforesaid connection with the railroad of the party of the second part, including all roadbed, superstructures, rights of way, side tracks, spurs, sidings, rails, tracks, bridges, viaducts, buildings, depots, station houses, carhouses, engine houses, warehouses, turn tables, water stations, fences, structures, fixtures and appurtenances belonging to the party of the first part, and all locomotives, engines, cars and other rolling stock, equipment, machinery, tools, instruments, implements, wagons, furniture and other property, both real and personal, of every kind and description appertaining thereto, and all corporate rights, privileges, immunities and franchises appertaining to said railroad, whether in the State of Arkansas, or elsewhere, together with all and singular the tenements hereditaments and appurtenances thereunto belonging, or in any wise appertaining, including all connections of the party of the first part with any other railroad that may be crossed or intersected by the party of the first part, or with which it may form a junction, and any railroad, depots, rights of way, side tracks or switches owned, operated or used by the party of the first part, in the City of Memphis, State of Tennessee, and all rights of user or movement over the railroad bridge across the Mississippi River, and all telegraph and telephone lines owned, operated or used by the party of the first part in connection with its aforesaid railroad, together with all leases or agreements of lease and leasehold interests held or owned by the party of the first part, and all other property, both real and personal, of every kind and description belonging to the party of the first part, (except the lands acquired by the Memphis & Little Rock Railroad Company under the Acts of Congress hereinbefore recited, and not used in connection with the operation of said railroad, and the aforesaid transfer boat, "General Pearson," which are not intended to be included in this conveyance), and also all books or accounts, records, muniments and evidences of title and rights and choses in action owned and enjoyed by the party of the first part.

In Testimony Whereof, the party of the first part has caused its corporate seal to be hereunto affixed and the same to be attested by the signatures of its Vice President

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and Secretary, in pursuance of the resolution of its Board of Directors, the day and year first above written.

(SEAL) CHOCTAW & MEMPHIS RAILROAD COMPANY,
By Henry Woods
Vice President.

Attest:
W. B. Smith
Secretary.

STATE OF ARKANSAS, } ss.
COUNTY OF PULASKI. }

I, Thos. S. Buzbee, a Notary Public in and for the County and State aforesaid, duly commissioned and acting, do certify that Henry Wood, with whom I am personally acquainted, and to me well known to be the Vice President of the Choctaw & Memphis Railroad Company, whose name is signed to the foregoing deed of conveyance, and W. B. Smith, with whom I am also personally acqnainted, and to me known to be the Secretary of the Choctaw & Memphis Railroad Company, whose name is also signed to the foregoing deed of conveyance, have this day personally appeared before me, in the County aforesaid, and acknowledged that they had, in their respective capacities as the Vice President and the Secretary of the Choctaw & Memphis Railroad Company executed the aforesaid deed for and on behalf of said corporation, and caused the same to be duly attested by the seal of said corporation under and pursuant to the authority conferred on them by resolution of the Board of Directors, and for the consideration and purposes therein mentioned and set forth.

WITNESS my signature and notarial seal the 30th day of June, 1900. My commission expires April 16th, 1901.

THOS. S. BUZBEE,
(Notarial Seal) Notary Public.

(U. S. Internal Revenue Stamps, amounting to Sixteen Hundred Twenty-one dollars and Fifty cents ($1621.50), attached.)

CERTIFICATES OF RECORD:

County of Crittenden: Recorded August 28, 1900, Record Book N-2, Pages 350 to 355.

County of Yell, Danville Dist.: Recorded October 6, 1900, Record Book R, Pages 367 to 373.

County of Yell, Dardanelle Dist.: Recorded October 15, 1900, Record Book Q, Page 369, etc.

County of St. Francis: Recorded September 1, 1900, Record Book, Vol. 48, Page 99.

County of Monroe: Recorded Sept 4, 1900, Record Book 6, page 495.

County of Prairie: Recorded September 10, 1900, Record Book K, Pages 307 to 313 inclusive.

County of Logan: Recorded October 2, 1900, in record of Deeds Book 4, pages 426.

County of Scott: Recorded September 27, 1900, Record Book 14, Pages 44, 45, 46, 47, 48, 49, 50, 51.

County of Sebastian: Recorded September 24, 1900 Record Book 25, Pages 161 to 168.

County of Lonoke: Recorded September 12, 1900 Record of Deeds No. 47, Page 85, etc.

County of Perry: Recorded October 20, 1900, Record Book F, Page 105.

And afterwards on, to wit, the 14th day of November, A. D. 1939 came John C. Traphagen, *et al.* by their attorneys and filed in the Clerk's office of said Court a certain petition in words and figures following, to wit:

Filed November 14, 1939

Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, July 1, 1937, January 1, 1938, July 1, 1938, January 1, 1939, July 1, 1939 and January 1, 1940 on Said Choctaw and Memphis Bonds.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The petition of John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, as a Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May

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1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, respectfully shows that:

1. On October 30, 1933, at the instance and request of the holders of large amounts of both Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952 (hereinafter referred to as C. O. & G. Bonds), and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949 (hereinafter referred to as C. & M. Bonds), your petitioners were organized as a Protective Committee for the holders of C. O. & G. Bonds and C. & M. Bonds outstanding in the hands of the public. Your petitioners are now acting as such Committee under and pursuant to a certain Deposit Agreement, dated November 2, 1934, as amended on December 5, 1934 and September 18, 1939. At the time of the organization of your petitioners as a Committee aforesaid, John C. Traphagen was duly appointed Chairman of said Committee, and S. L. deVausney was duly appointed Secretary of said Committee, and said persons have at all times since acted in such capacities. On December 28, 1933, by order of this Court (Order No. 38), your petitioners were allowed to intervene generally as parties to the above entitled proceedings.

2. Upon information and belief, under date of January 2, 1899, Choctaw and Memphis Railroad Company (hereinafter referred to as C. & M.) duly executed and delivered to Girard Life Insurance, Annuity and Trust Company of Philadelphia, as Trustee, an Indenture (hereinafter referred to as the C. & M. Indenture), authorizing the issuance thereunder of an aggregate of $3,750,000 principal amount of the C. & M. Bonds. Girard Trust Company is now Successor Trustee under the C. & M. Indenture.

3. Upon information and belief, thereafter in accordance with provisions of the C. & M. Indenture, there were duly executed, authenticated, issued and sold by C. & M. and there are now outstanding in the hands of the public, $3,524,000 aggregate principal amount of the C. & M. Bonds and, in addition, $1,000 principal amount thereof were executed, authenticated and issued, and are now owned and held in the treasury of The Chicago, Rock Island and Pacific Railway Company (hereinafter referred to as the Debtor Pacific Company).

4. Upon information and belief, the C. & M. Bonds hereinabove referred to are secured by, among other things, a first lien on 280.49 miles of railroad from a point on the west bank of the Mississippi, opposite Memphis, Tennessee, to the Arkansas-Oklahoma line, on certain property in Memphis, Tennessee, and on appurtenances to said line of railroad.

5. Upon information and belief, after the issuance and sale of the C. & M. Bonds as aforesaid, C. & M. sold, subject to the lien of the C. & M. Indenture, all of its property to Choctaw, Oklahoma and Gulf Railroad Company (hereinafter referred to as Debtor C. O. & G.) in consideration of, among other things, the agreement and undertaking by Debtor C. O. & G. to pay all the C. & M. Bonds theretofore issued and those that might thereafter be issued under the C. & M. Indenture.

6. Upon information and belief, subsequent to the sale of its property as aforesaid by C. & M. to Debtor C. O. & G., the Articles of Association of C. & M. were allowed to lapse.

7. Upon information and belief, under date of March 24, 1904, Debtor C. O. & G. and Debtor Pacific Company entered into a certain lease under the terms of which Debtor C. O. & G. leased to Debtor Pacific Company, for the term of 999 years, the lines of railroad and properties of Debtor C. O. & G. including the lines of railroad and properties upon which the C. & M. Indenture constituted, and now constitutes, a first lien.

8. Upon information and belief, Debtor Pacific Company, Debtor C. O. & G. and other subsidiary corporations to Debtor Pacific Company, are parties to the above entitled proceedings as Debtors; Frank O. Lowden, James E. Gorman and Joseph B. Fleming at all times since the appointment of Trustees for the Debtors, have been acting as Trustees for the several Debtors, including Debtor Pacific Company and Debtor C. O. & G. and have collected the earnings, rents, issues and profits of all of the lines of railroad and property constituting the unified railway system of Debtor Pacific Company, and carried the same in an account or accounts in the names of the Trustees.

9. Upon information and belief, on January 1, 1934, July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, July 1, 1937, January 1, 1938, July 1, 1938, January 1, 1939 and July 1, 1939, semi-annual

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stalments of interest, each in the amount of $88,100, be-ame due and payable on the C. & M. Bonds, and on January 1940 a further semi-annual instalment in the amount of 88,100 will become due and payable on the C. & M. Bonds. y an order of this Court (Order No. 43), made and entered n January 29, 1935, the Trustees were authorized and di-ected to pay, and did pay, on February 5, 1935, the interest ue January 1, 1934, on the C. & M. Bonds together with nterest on said interest at the rate of 5% per annum to the ate of payment; but no other or further payment of any uch instalments of interest has been made by the Trus-ees in any capacity or by any other person. The aggregate mount of past due and unpaid interest on the C. & M. onds, plus the instalment due January 1, 1940, represent-ng twelve instalments on which no payments have been ade, is $1,057,200.

10. Your petitioners have been furnished with an "In-ome Account Statement" for "Rock Island Lines", which erm includes the lines of railroad subject to the C. & M. ndenture, for the annual period from June, 1933 to May, 934, inclusive, in accordance with the "Revised Formula", repared and filed in Court pursuant to Order No. 45B printed Record, p. 667) entered November 9, 1934. Said ncome Account shows that for said annual period of 933-34 the income of the lines on which the C. & M. Inden-ure constitutes a first lien, after deducting all intra-ompany adjustments, was $389,884, or about 2¼ times the nterest charges on the C. & M. Bonds for the period in uestion.

11. Pursuant to Order No. 106A entered June 17, 1937 nd Order No. 106B entered April 7, 1939, the Trustees repared and filed in Court "Income Account by Mortgage ines for the Year ended December 31, 1936" and "Income ccount by the Mortgage Lines for the Year ended Decem-er 31, 1937" (the first of such Income Accounts filed the rd day of February, 1938 by the Trustees, and the second f such Income Accounts filed the 10th day of May, 1938 by he Trustees, being herein incorporated by reference). Such ncome Accounts show income balances for the lines on hich the C. & M. Indenture constitutes a first lien, before ntra-company transactions not involving a cash outlay ther than company material transactions, of $555,529.78 r the year ended December 31, 1936 and $471,459.34 for

the year ended December 31, 1937, such earnings being respectively 3⅛ and 2¾ times the interest on the C. & M. Bonds.

12. The results of the above formulas for the three respective one-year periods mentioned above are the only earnings figures which have been segregated by the mortgage lines. In each of these formulas the lines subject to the C. & M. Indenture have been treated as a mortgage division.

13. Aside from the three above mentioned formula years there are available only System earnings figures. In each of the years since the commencement of these proceedings, except 1935, the System earnings have been at least as much as one or more of the formula periods. The lines subject to the C. & M. Indenture have on this basis earned well over twice the interest on the C. & M. Bonds in every year since the commencement of these proceedings.

14. The lines on which the C. & M. Indenture constitutes a first lien have consistently earned the interest on the C. & M. Bonds several times over in each year since the commencement of these proceedings, and such earnings are subject to the lien of the C. & M. Indenture.

15. The balance sheet of the Trustees as of August 31, 1939, filed in this Court and herein incorporated by reference, shows cash on hand of $5,766,081.95 and current assets over twice current liabilities. The Choctaw Committee is informed and believes that this position has materially improved since August 31, 1939. Petitioner is informed and believes that the earnings available for fixed charges on the Rock Island Lines for the year 1939 will aggregate over $5,000,000—a figure substantially in excess of all previous estimates; and accordingly the earnings of the C. & M. Lines available for payment of interest on the C. & M. Bonds for the year 1939 will be well over three times the interest on the C. & M. Bonds for such year.

16. The First and Refunding Committee filed with the Interstate Commerce Commission a plan of reorganization on July 20, 1938 (copy of which is on file in this proceeding and is herein incorporated by reference). Such plan of reorganization provided that a special type of First Mortgage Bonds (Series A), which were to carry fixed interest from date of issuance (all others were to be income bonds for the first five years), be awarded to the holders of

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C. & M. Bonds for not only the principal amount of their Bonds but the interest thereon unpaid from the date of these proceedings.

17. The First and Refunding Plan referred to next above was submitted to the Interstate Commerce Commission, and Examiner Conway on September 22, 1939 filed with the Commission a report proposing a plan of reorganization somewhat different from that of the First and Refunding Committee (such report copy of which was filed in this proceeding is herein incorporated by reference). Examiner Conway awarded principal and full-unpaid interest in new First Mortgage Bonds (the best system bonds provided for in his report) to the holders of C. & M. Bonds.

18. The Debtor in its Plan filed in this proceeding in 1936 (such Plan is herein incorporated by reference) and in a new compromise proposal recently submitted has left the C. & M. Bonds undisturbed.

19. Your petitioners have heretofore filed in the above entitled proceedings their certain petition for the payment of interest on the C. & M. Bonds, dated January 11, 1935, and after a hearing thereon this Court ordered (Order No. 43) the payment of interest due January 1, 1934 on the C. & M. Bonds. By petition dated July 19, 1935 your petitioners requested the payment of interest due July 1, 1934, January 1, 1935 and July 1, 1935, and upon the answer of the Trustees for the Debtors that the Rock Island Lines were operating at a deficit and other answers, such petition was denied by Order No. 43A entered September 17, 1935. Other than as set forth in this paragraph, your petitioners have sought no relief prayed for herein.

20. Petitioners position is briefly this:

(a) The lines subject to the C. & M. Indenture have earned the interest on the C. & M. Bonds several times over in every year since the commencement of this proceeding and every formula has shown this true.

(b) Every plan that has been proposed has recognized C. & M. earnings and has offered C. & M. bondholders full interest during these proceedings and principal in the best securities provided for in the plan or in cash or has left the C. & M. Indenture undisturbed.

(c) All of the earnings of lines subject to the C. & M. Indenture are subject to the lien of that Indenture.

(d) There is no reason for inequitably withholding from the C. & M. bondholders interest which their properties have earned several times over and which is rightfully theirs.

WHEREFORE, your petitioners pray that an order be entered directing that answers hereto be filed and setting down a hearing to be held on this petition and the answers thereto in the form submitted with this petition, and that an order be entered herein directing the Trustees to pay the instalments of interest on the C. & M. Bonds due on July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, July 1, 1937, January 1, 1938, July 1, 1938, January 1, 1939 and July 1, 1939 and to become due on January 1, 1940, together with interest on each of such instalments from their respective due dates to the date of payment at the rate of 5% per annum, and for such other and further relief as may be deemed just and proper. Dated, November 13th, 1939.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds.

By JOHN C. TRAPHAGEN,
Chairman.

WRIGHT, GORDON, ZACHRY & PARLIN,
Attorneys for Petitioners,
No. 63 Wall Street,
New York, N. Y.

[Verification omitted in printing.]

And afterwards on, to wit, the 4th day of December, A. D. 1939 came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

BLEED THROUGH – POOR COPY

wer of Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Estates of the Principal and Subsidiary Debtors Herein, to the Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds for an Order Directing Payment of Interest Due July 1, 1934, and Thereafter to January 1, 1940, on Said Choctaw and Memphis Bonds.

Filed December 4, 1939

Now come Frank O. Lowden, James E. Gorman and ph B. Fleming, Trustees of the estates of the principal subsidiary debtors herein, and for answer to the peti- of Protective Committee for Choctaw, Oklahoma and Railroad Company Consolidated Mortgage 5% Gold ds and Choctaw and Memphis Railroad Company First tgage 5% Gold Bonds for an order directing payment terest due July 1, 1934, and thereafter to January 1, , on said Choctaw and Memphis Bonds, respectfully to the Court:

. Upon information and belief, the Trustees admit the ations and averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 10, 11 and 12 of said petition.

. Answering paragraph 13 of the petition, the Trus- admit that the system earnings since the commence- t of these proceedings, for each of the years, except , have been as much as the earnings for one or more he formula periods, but they neither admit nor deny for each of the other periods the lines subject to the taw and Memphis Indenture have earned over twice nterest on the Choctaw and Memphis Bonds. Owing to ible changes in the movement of traffic, and variations xpenditures for maintenance and operation, it cannot tated as a fact that the earnings for other than the ula years were over twice the interest on said bonds.

. The Trustees have no accurate knowledge, and there- deny the allegations in paragraph 14 of the petition in other than the formula years the earnings on the taw and Memphis Mortgage Division were several s the interest on the Choctaw and Memphis Bonds. The

earnings under the formula for the formula years are shown on statements on file in this proceeding. Application of a formula for the years 1936 and 1937 was approved by the Court and the parties herein. The formula that was applied for the period from June, 1933, to May, 1934, was not approved by the parties or by the Court.

4. The Trustees admit the allegation in paragraph 15 stating the amount of cash on hand as of August 31, 1939, but they do not admit the correctness of the conclusions stated elsewhere in said paragraph.

5. The Trustees neither admit nor deny the allegations and averments in paragraphs 16, 17 and 18 of the petition relating to provisions in the several plans of reorganization now before the Interstate Commerce Commission regarding allotments for accrued and unpaid interest on the Choctaw and Memphis Bonds.

6. The Trustees admit the allegation in paragraph 19 of the petition to the effect that interest installments on the Choctaw and Memphis Bonds maturing after January 1, 1934, have not been paid.

7. The Trustees do not admit that the conclusions stated in paragraph 20 of the petition are correct.

Further answering, the Trustees show to the Court:

8. The Trustees conceive it to be their primary duty so to maintain the trust estate as to render adequate and efficient railroad service for the public. A contrary concept, and performance in keeping with such a policy, could lead to but one result: diminution of earnings and depletion of the value of the trust estate. Available cash should be expended in the interest of adequate and efficient service for the public until the requirements for such service are satisfied. Present and prospective cash of the trust estate is estimated to be no more, and more likely less, than the amount of cash that will be required to restore the property and to maintain it in a condition to render adequate and efficient railroad service to the public.

Experience has shown, and the mature judgment of the officers of the Trustees sustains the determination, that the amount of working cash of the trust estate available at any time should not be permitted to drop below $3,000,000. A safer minimum would be $4,000,000 to guard against unforeseen or unexpected contingencies or emergencies.

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The Trustees submit the following statement showing forecast of cash to July 1, 1940, and estimated cash disbursements from December 1, 1939, to and including June 30, 1940:

FORECAST OF CASH TO JULY 1, 1940

Cash on hand as of December 1, 1939		$ 7,490,000
ESTIMATED CASH RECEIPTS FROM DECEMBER 1, 1939, TO JUNE 30, 1940:		
Estimated Net Revenue from Railway operation	$ 7,025,226	
Deduction from Net Revenue for depreciation	2,421,600	
Deduction from Employes wages for Railroad Retirement Act	661,500	
Estimated non-operating income	301,950	
Payments from General American Tank Car Corporation covering purchase of refrigerator cars	78,993	
Estimated Total Cash Receipts		$10,489,269
Estimated Total Cash Available		$17,979,269
ESTIMATED CASH DISBURSEMENTS FROM DECEMBER 1, 1939, TO JUNE 30, 1940:		
Estimated payments for State and local taxes	$ 2,547,711	
Payments of amounts deducted from employes wages for Railroad Retirement Act	551,300	
Payments of excise tax levied against Railroad for Railroad Retirement Act	551,300	
Payments of Federal taxes levied against Railroad for Unemployment Insurance	576,400	
Payment of Federal taxes levied against Railroad for Social Security	65,000	
Payments for Hire of Equipment	1,862,000	
Net payments for rental of joint facilities	651,000	
Principal and interest payments on 3½% Equipment Certificates due July 1, 1947	3,237,042	
Principal and interest payments on purchase contracts for 36 Diesel switch locomotives	252,687	
Principal and interest payments on Equipment Trust Series "R"	300,900	
Principal and interest payments on 10 new De Luxe chair cars purchased from Pullman Company	131,560	
Principal and interest payments on 2 new 2000 h.p. Diesel locomotives and 10 new lightweight streamlined cars for Rocky Mountain Rockets	109,878	
Principal and interest payments on 2 Baggage-mail cars purchased for Kansas City-Dallas Rockets	29,473	
Initial down payment on Series "S" Equipment Trust, covering 1000 new box cars and 10-360 h.p. Diesel switch locomotives	313,420	
Estimated principal and interest payments on purchase of 10 new 600 h.p. Diesel switch locomotives	45,000	
Interest payment on $4,500,000 Trustees' Certificates	67,500	
Estimated capital expenditures cash for 1939		

Carry-over Budget: Roadway and Structures	548,873	
" " " : Equipment	864,929	
Estimated capital expenditures cash to be spent in the first 6 months of 1940 in connection with 1940 Capital Expenditures Budget	2,449,610	
Rock Island's one-fourth proportion of estimated cost of tracks and appurtenances to serve produce dealers in Kansas City, Mo.	250,000	
Advance to Railway Express Agency, Inc., to redeem bonds	20,531	
Payments to Simonds-Shields-Lonsdale for storage bins constructed in grain elevator	17,500	
Estimated Total Cash Disbursements		$15,448,614
Estimated Cash Balance on July 1, 1940		$ 2,535,655

(REVISED 12-1-39)

The foregoing statement shows an estimated cash balance on July 1, 1940, of $2,535,655. On the basis of this estimate, payment of interest of $1,057,200 on the Choctaw and Memphis Bonds, and interest on interest of $145,365, as demanded by the petitioner, would leave a cash deficit on July 1, 1940, of $1,666,910 under the necessary minimum working cash of $3,000,000.

In the administration of the trust estate the Trustees believe it to be no part of their duty as such Trustees to speculate on possible future increases in earnings, and to dispose of their cash on the theory that future increases are assured. Rather, in times like the present, they believe it to be their duty to maintain a conservative outlook, and to regulate their expenditures in a manner that will conserve the estate and its earnings and thus protect the property, and the adequacy and efficiency of the service, against possible adverse or less favorable conditions that might arise. Doubts in this respect should be resolved in favor of conserving, so far as possible, the cash of the trust estate, and using such cash only where expenditures will promote better service and more efficient operation. For these reasons the Trustees do not recommend at this time the expenditure of cash for payment of interest on the Choctaw and Memphis Bonds.

But entirely apart from the performance by the Trustees of what they conceive their duty to be in relation to the cash of the trust estate, the forecast of cash on July 1, 1940, of but $2,535,655 makes it imperative that the Trustees oppose any attempt by the petitioner to obtain payment of interest on the Choctaw and Memphis Bonds.

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9. During the trusteeship the Trustees have expended on the Choctaw and Memphis mortgage division, which extends from a point in Arkansas on the Mississippi River opposite Memphis, Tennessee, to the western boundary of Arkansas, a distance of 280 miles, for additions and betterments and operating charges in connection with such additions and betterments a total of $613,266. Looking forward to the next three years, and if sufficient cash should be available, the management plans to expend on the Choctaw and Memphis mortgage division for improvements and betterments and operating charges in connection therewith a total estimated sum of $1,490,059.

10. Deferred maintenance on the trust estate reached its peak about January 1, 1936, at which time the amount thereof was estimated by the management to be nearly $19,000,000. The following statement shows estimated deferred maintenance on January 1, 1936, the estimated amount that will be made up by January 1, 1940, and the estimated balance that will remain on that date:

Estimated Deferred Maintenance on system lines at peak (January 1, 1936), as estimated by Management, and estimated balance of Deferred Maintenance as of January 1, 1940

	Estimated Deferred Maintenance		
	Roadway & Structures	Equipment	Total
Estimated at Peak (January 1, 1936)	$13,819,000	$5,000,000	$18,819,000
Estimated Deferred Maintenance Made-up January 1, 1936 to December 31, 1939	10,061,898	4,350,000	14,411,898
Estimated balance of Deferred Maintenance as of January 1, 1940	$ 3,757,102	$ 650,000	$ 4,407,102

Note: The above estimates are based on the existing levels of traffic.

The Trustees believe it to be incumbent upon them to cure remaining deficiencies in maintenance as promptly as the cash may be available for that purpose.

11. The reasons asserted by petitioner for the payment of interest on the Choctaw and Memphis bonds are based on the results of the application of what is called a Formula for Segregation of Earnings. A formula, which was not accepted by the parties nor approved by the Court, was first applied to the period from June, 1933, to May, 1934. Another formula was applied to the periods, 1936 and 1937. These formulas were constructed as one means or method for testing the relative values of the claims of the several groups of mortgage bondholders and the proportionate

allowance of new securities to each group of bondholders. It was necessary to make numerous allocations of earnings and expenses on an estimated or arbitrary basis as between the different mortgage divisions, and while the results of the application may be accepted in the matter of allocation of new securities as between the mortgage divisions because it would operate uniformly and alike on all such divisions, it would not be proper to use the results as the basis for payment of money to one group of bondholders independently of the other groups. Furthermore, the Court will recall that in certain important respects the formula that was applied is under attack by some of the parties in interest, and that the questions at issue now are pending in the Circuit Court of Appeals for determination.

The petitioner urges payment of interest on the Choctaw and Memphis bonds on a showing under the formula for segregation of earnings that the Choctaw and Memphis mortgage division has more than earned the amount of such interest. The Trustees submit that there can be no greater reason for payment of interest where the formula indicates that the whole or more of the interest has been earned than where less than the entire interest has been earned. If a showing under the formula that all of the interest has been earned is sufficient to justify payment, then it would seem that a showing that one-half the interest has been earned would justify payment of one-half the mortgage interest. If a showing under the formula that twice the mortgage interest has been earned is sufficient to justify payment of the interest, then it would seem that a showing that one-half the interest has been earned would justify payment of one-fourth of the interest. The use of the formula results in that manner and at this time with respect to the several mortgage divisions would divest the treasury of all of its cash and cripple the operation of the trust estate.

12. The petitioner directs attention to a plan of reorganization filed with the Interstate Commerce Commission by the First and Refunding Mortgage Committee and a tentative plan of reorganization proposed by an Examiner of the Commission. It is pointed out by the petitioner that the First and Refunding Committee plan provides for a type of bond with fixed interest coupons to pay off and discharge not only the principal of, but the accrued and unpaid interest on, the Choctaw and Memphis bonds. It is pointed out, furthermore, that the proposed plan of reorganization

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submitted by the Examiner for the Commission provides for First Mortgage Bonds to pay off and discharge, not only the principal of, but accrued and unpaid interest on, the Choctaw and Memphis bonds. Nothing is found in the petition to indicate that there is any proposal now before the Commission to pay off and discharge the accrued and unpaid Choctaw and Memphis interest in cash. Whether the new securities to be issued to discharge the accrued and unpaid interest on the Choctaw and Memphis bonds may be worth their face amount in cash cannot be foretold at this time. The Trustees submit that the question of payment and discharge of the accrued and unpaid interest on the Choctaw and Memphis bonds, and the kind or type of payment that will be provided, is at this time pending before the Interstate Commerce Commission for decision in accordance with the requirements of Section 77 of the Bankruptcy Act, and that any action by the Court at the present time contemplating an allowance of cash for payment of this interest would be premature, and not consistent with the pending proceeding before the Commission to formulate a plan of reorganization and to certify such plan to the Court pursuant to the statute.

The Trustees are informed that the plan of reorganization proposed by the Examiner for the Commission provides that the plan shall take effect as of January 1, 1939. If the plan should be approved and placed in effect, and the pending petition for payment of interest to January 1, 1940, should be allowed, the petitioner, in addition to receipt of cash payment for interest accrued to that date, would hold securities representing the accrued interest to January 1, 1939, and interest coupons on the mortgage principal for the year 1939.

WHEREFORE, the Trustees recommend to the Court that no order be entered for payment of interest on the Choctaw and Memphis Mortgage Bonds, and that the petition for payment thereof be denied.

FRANK O. LOWDEN,
JAMES E. GORMAN,
JOSEPH B. FLEMING,
Trustees,
By (s) JAMES E. GORMAN,
One of said Trustees.

OTIS F. GLENN,
Counsel for Trustees.

And afterwards on, to wit, the 11th day of April, A. D. 1940, came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Filed April 11, 1940

Answer of Frank O. Lowden, James L. Gorman and Joseph B. Fleming, Trustees of the Estates of the Principal and Subsidiary Debtors Herein, to the Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds for an Order Directing Payment of Interest Due July 1, 1934, and Thereafter to January 1, 1940, on Said Choctaw and Memphis Bonds.

Upon leave of court to withdraw answer of Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the estates of the principal and subsidiary debtors herein, to the petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds for an order directing payment of interest due July 1, 1934, and thereafter to January 1, 1940, on said Choctaw and Memphis bonds, filed by said Trustees on December 4, 1939, and to substitute the following answer therefor, the said Trustees respectfully show to the Court:

1. Upon information and belief, the Trustees admit the allegations and averments in paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of said petition.

2. Answering paragraph 13 of the petition, the Trustees admit that the system earnings since the commencement of these proceedings, for each of the years, except 1935, have been as much as the earnings for one or more of the formula periods, but they neither admit nor deny that for each of the other periods the lines subject to the Choctaw and Memphis Indenture have earned over twice the interest on the Choctaw and Memphis Bonds.

3. The Trustees have no accurate knowledge as to the allegations in paragraph 14 of the petition that in other than the formula years the earnings on the Choctaw and

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Memphis Mortgage Division were several times the interest on the Choctaw and Memphis Bonds. The earnings under the formula for the formula years are shown on statements on file in this proceeding.

4. The Trustees admit the allegations in paragraph 15 stating the amount of cash on hand as of August 31, 1939, but they do not admit the correctness of the conclusions stated elsewhere in said paragraph.

5. The Trustees neither admit nor deny the allegations and averments in paragraphs 16, 17 and 18 of the petition relating to provisions in the several plans of reorganization now before the Interstate Commerce Commission regarding allotments for accrued and unpaid interest on the Choctaw and Memphis Bonds.

6. The Trustees admit the allegations in paragraph 19 of the petition to the effect that interest installments on the Choctaw and Memphis Bonds maturing after January 1, 1934, have not been paid.

Further answering, the Trustees state to the Court that since the filing of the petition herein the earnings of the trust estate have substantially improved. A conservative estimate of the prospective earnings for the year 1940 indicates that there should be available a sum, not over $1,000,000, in excess of the amount that the Trustees will require for proper maintenance of the trust estate and the performance of adequate and efficient service for the public. The Trustees do not recommend to the court what disposition should be made of said sum not over $1,000,000, but state that if disbursement thereof shall be directed by the Court such disbursements should be made in several installments spread over a period of one year.

Respectfully submitted,

FRANK O. LOWDEN
JAMES E. GORMAN
JOSEPH B. FLEMING
Trustees

By JAMES E. GORMAN
One of said Trustees.

OTIS F. GLENN
Counsel for Trustees.

Chicago, Illinois,
April 8, 1940.

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And afterwards on, to wit, the 7th day of May, A. 1940 came the Choctaw Committee by their attorneys a filed in the Clerk's office of said Court a certain Answer words and figures following, to wit:

Filed May 7, 1940

Answer of Protective Committee (Herein Call Choctaw Committee) for Choctaw, Oklahoma a Gulf Railroad Company Consolidated Mortga 5% Gold Bonds, Due May 1, 1952, and Choct and Memphis Railroad Company First Mortga 5% Gold Bonds, Due January 1, 1949, to Petitio of the Marine Midland Trust Company of Ne York, as Trustee of the Carrollton Branch Fi Mortgage of the Chicago, Rock Island and Gu Railway Company, for the Payment of Inter on Carrollton Branch Mortgage Bonds.

The Choctaw Committee, by the undersigned, its att neys, answering the petitions, verified February 11, 19 and April 18, 1940, respectively, of the Trustee of the called Carrollton Branch Mortgage, respectfully shows the Court:

While the subject matter of the petitions has be referred to a master, and there is a question of procedu in bringing on the petitions for a hearing as prayed, t Choctaw Committee makes no point on either of the grounds. The second petition of the Carrollton Bran Mortgage Trustee is apparently prompted—perhaps by t Reconstruction Finance Corporation which holds in pled all of the Carrollton Branch Mortgage Bonds—by hearin held on April 11, 1940, on the petition of the Choctaw Co mittee for the payment of Choctaw and Memphis intere The original petition of the Carrollton Branch Mortga Trustee was allowed to sleep for some two years, and see now to be renewed on the theory that if interest is paid the Choctaw and Memphis bonds, there should be inter paid on all issues of bonds which show *any* earnings.

If a divisional mortgage line in the Rock Island syst actually has *substantial* earnings, over and above inter requirements and additions and betterments, available f interest, and the mortgage bonds of that division are own

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by the public generally or a third party, there is real ground for urging payment of interest. In the case of the Choctaw and Memphis bonds, interest has been earned about three times over. The Choctaw and Memphis mortgage division appears to have contributed about 28% of the earnings of the entire Rock Island system. All of the Choctaw and Memphis bonds are held by the public. On the other hand, in the case of the Carrollton Branch Mortgage Bonds, while the Carrollton Branch does have earnings, these earnings are not sufficient to pay interest on the Carrollton Branch Mortgage Bonds, either before or after deducting additions and betterments. Relatively, therefore, while the Carrollton Branch has earnings, it is in nowhere near a position comparable with Choctaw and Memphis bonds.

The real distinction, however, lies much deeper. All of the Carrollton Branch Mortgage Bonds are pledged with the Reconstruction Finance Corporation. They are actually owned by Rock Island, the Principal Debtor. They are part of a large mass of collateral pledged for a very large loan by the Reconstruction Finance Corporation to Rock Island. Payment of interest on the Carrollton Branch Mortgage Bonds would in reality be payment of interest on the Reconstruction Finance Corporation's loan to Rock Island —payment of interest to Reconstruction Finance Corporation.

The petition for the payment of Carrollton Branch Mortgage interest, therefore, is not simple. In the first place, the petition itself shows that the Carrollton Branch does not have earnings over and above interest requirements and additions and betterments. This in itself might well be a sufficient ground for denying the petition in any respect. Of more importance, however, is the fact that the determination of Carrollton Branch earnings, additions and betterments thereto, and interest requirements thereof, is not really the problem presented. In reality, before interest should be paid on Carrollton Branch Mortgage Bonds, when all of those bonds are owned by Rock Island and pledged to Reconstruction Finance Corporation, the entire status of the Reconstruction Finance Corporation loan as a whole should be examined into. Only if the loan as a whole warrants the payment of interest should Carrollton Branch Mortgage interest be paid. A proper determination, therefore, will require an analysis of values and

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earnings of all Reconstruction Finance Corporation collateral, and the relation of the Reconstruction Finance Corporation loan to the Rock Island picture.

The Choctaw Committee feels, therefore, that while upon a proper showing it may not object to the payment of Carrollton Branch Mortgage Bond interest, the petitions by the Trustee of the Carrollton Branch Mortgage do not set forth facts sufficient to warrant the Court directing the payment of interest at this time.

WHEREFORE, the Choctaw Committee prays that this Court proceed no further upon the petitions of the Trustee of the Carrollton Branch Mortgage until such petitions be amended to include all necessary allegations of fact respecting the Reconstruction Finance Corporation loan, and until such facts be established to the satisfaction of this Court by formal proof as directed by this Court.

WRIGHT, GORDON, ZACHRY & PARLIN,
Attorneys for Choctaw Committee,
aforesaid.

Dated, April 26, 1940.

And afterwards on, to wit, the 2nd day of July, A. D. 1940 there was filed in the Clerk's office of said Court a certain Memorandum in words and figures following, to wit:

Filed July 2, 1940

Memorandum.

WILKERSON, District Judge:

On November 14, 1939, the Protective Committee representing Choctaw and Memphis First Mortgage 5% Bonds filed its petition for an order directing payment of accrued unpaid interest on said bonds amounting to approximately $1,057,000. plus interest on each unpaid instalment of interest at the rate of 5% per annum. Answers were filed by a number of the other parties opposing such payment, and the petition was heard by the court on April 11, 1940.

At the hearing the Trustees of the debtor's estate withdrew their answer and filed a substitute answer in which, on the information then available, they estimated that from earnings they should have on hand, on December 31, 1940, a sum not over $1,000,000. in excess of what would be needed for proper maintenance and the performance of adequate railroad service. They did not recommend to the court what disposition should be made of said sum of $1,000,000.

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Memorandum.

The question before the court is whether this sum or any part thereof should be disbursed as interest on the Choctaw and Memphis bonds.

Since the close of the hearing events have occurred in foreign and domestic affairs involving the interests of the United States that make it difficult at this time to forecast the future requirements on industry, including the railroads, to meet emergencies that may arise which may call for the expenditure of considerable sums of money. It is possible that a preparedness program may require enlarged expenditures by the railroads to promote greater efficiency in discharging the part to be taken by them in such a program. Furthermore, loss of foreign markets may mean a shrinkage of railroad traffic. A preparedness program by the government may have a tendency to overcome such shrinkage, but an expansion of domestic traffic may lead to higher prices of commodities which the railroads consume.

The ultimate responsibility for the maintenance of railroad service on the lines of the debtor that will be adequate at all times to meet the requirements for efficient railroad service, and to meet the demands that may arise in the existing emergency requiring expenditures for expansion of railroad facilities, rests upon the court. To safeguard that responsibility the court believes that the income of the trust estate should, so far as possible, be conserved, and that all cash in hand at this time and for a reasonable time in the future should not be disbursed for other purposes than to meet the requirements of railroad operation.

The petition of the Choctaw and Memphis Committee for payment of interest on the Choctaw and Memphis bonds is denied, but without prejudice to renewal of the application to pay such interest on or after one hundred and twenty (120) days from July 1, 1940. Other matters than those considered above that may be urged in favor of or in opposition to the payment of interest are not now decided.

2 July, 1940.

And afterwards on, to wit, the 4th day of November, A. D. 1940 came John C. Traphagen, *et al.* by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

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Filed November 4, 1940

Petition of Protective Committee for Choctaw, homa and Gulf Railroad Company Consol Mortgage 5% Gold Bonds and Choctaw and phis Railroad Company First Mortgage 5% Bonds for an Order Setting a Further Heari the Petition of Said Committee for Payme Interest on Said Choctaw and Memphis Bo

To the Honorable the Judges of the District Court United States for the Northern District of I Eastern Division:

The petition of John C. Traphagen, James E. George H. Wilson and Charles G. Woodward as a tive Committee for Choctaw, Oklahoma and Gulf Ra Company Consolidated Mortgage 5% Gold Bond Choctaw and Memphis Railroad Company First Mo 5% Gold Bonds (hereinafter called the Choctaw Co tee), respectfully shows that:

1. On November 14, 1939, the Choctaw Committe a petition herein praying that this Court direct pa of interest on Choctaw and Memphis Railroad Co First Mortgage 5% Gold Bonds, due January 1, 194

2. Answers to said petition were filed herein by ber of parties, and the matter was heard by this Co April 11, 1940.

3. On July 2, 1940, this Court handed down its ion on the application set forth in said petition, t paragraph of which opinion reads as follows:

> "The petition of the Choctaw and Memphis mittee for payment of interest on the Chocta Memphis bonds is denied, but without preju renewal of the application to pay such inter or after one hundred and twenty (120) days July 1, 1940. Other matters than those cons above that may be urged in favor of or in opp to the payment of interest are not now decide

4. The Choctaw Committee hereby renews it a tion for payment of such interest.

WHEREFORE, your petitioners pray that an order, form of the order annexed hereto, be entered herein, a further hearing on said petition of the Choctaw

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mittee filed herein November 14, 1939, and for such other and further relief as may be deemed just and proper. Dated, October 30, 1940.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD, As a Protective Committee, as aforesaid,
By S. L. DE VAUSNEY
(S. L. de Vausney)
Secretary

WRIGHT, GORDON, ZACHRY & PARLIN,
Attorneys for Petitioner,
63 Wall Street,
New York, N. Y.

[Verification omitted in printing.]

And on the same day, to wit, the 4th day of November, A. D. 1940, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable MICHAEL L. IGOE, District Judge, appears the following entry, to wit:

Order Setting a Further Hearing on the Petition of the Choctaw Committee for Payment of Interest on Choctaw and Memphis Bonds.

On reading and filing the petition verified October 30, 1940 and filed by John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituted as a Protective Committee (hereinafter referred to as the Choctaw Committee), a party to these proceedings, for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds; on the petition of the Choctaw Committee for payment of interest on said Choctaw and Memphis Bonds filed herein November 14, 1939 and the answers thereto; and on the record of the hearing before this Court on April 11, 1940; and on the opinion, filed herein July 2, 1940, relating to the matters set forth in said petition and answers, it is

ORDERED that the Choctaw Committee or its counsel cause a copy of the petition verified October 30, 1940 and this order to be served on or before November 15, 1940,

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personally or by mail, upon counsel of record for each of the parties to this proceeding, which service shall be deemed reasonable and sufficient notice to the parties of said petition and of this order and of the proceedings to be had pursuant thereto; and

ORDERED that a further hearing be and it is hereby set down for hearing before this Court, at 10 o'clock A.M., on the 22nd day of November, 1940, on the petition, filed herein November 14, 1939, of said Choctaw Committee for payment of interest on the Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, and on the motion of the Choctaw Committee renewing its application for payment of such interest.

Enter

IGOE,
Judge.

Dated, November 4, 1940.

And afterwards, to wit, on the 15th day of January, 1941, being one of the days of the regular December, 1940, term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Entered January 15, 1941

Order.

IT IS ORDERED by the Court that all petitions for the payment of interest on the Choctaw or Carrolton Branches of the Debtor be and they are hereby continued generally and that the petitioners may bring up said petitions for hearing upon the giving of five (5) days notice to the parties in interest.

And afterwards on, to wit, the 15th day of August 1941 there was filed in the Clerk's office of said Court a certain Certified copy of a report and order approved by the Commission, etc., in words and figures following, to wit:

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Supplemental Report of the Commission.

INTERSTATE COMMERCE COMMISSION

FINANCE DOCKET No. 10028
CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY
REORGANIZATION

Submitted January 9, 1941. Decided July 31, 1941.

* * * * * *

Supplemental Report of the Commission.

* * * * * *

Petition of Choctaw committee.—Under the plan the holders of Choctaw & Memphis first-mortgage bonds would receive for their claim for principal and interest thereon to January 1, 1941, an equivalent face amount of new first-mortgage bonds. The Choctaw committee argues that these first-mortgage bonds will not be worth par at issuance, and requests that the plan be modified by allotting to the Choctaw & Memphis bonds new securities which have a dollar worth equal to principal and interest, with interest on interest, of such bonds outstanding.

By order No. 43, entered January 29, 1935, pursuant to petition by the Choctaw committee, the bankruptcy trustees were authorized and directed, by the bankruptcy court, to pay on February 5, 1935, from the funds in their hands, interest due January 1, 1934 (represented by interest coupon maturing on that date), upon the $3,524,000 of Choctaw & Memphis first-mortgage 5-percent bonds outstanding, and in addition to pay to each holder of a coupon or claim for interest on such bonds due on the above date interest on the amount so due for interest at the rate of 5 percent per annum from the due date of the aforesaid interest payment to the date of the aforesaid payment.

On November 13, 1939, the Choctaw committee requested the court to order the payment of additional interest on the Choctaw & Memphis bonds, represented by coupons maturing July 1, 1934, to January 1, 1940, inclusive, together with interest on each of the installments of interest from their due dates to the date of payment at the rate of 5 percent per annum. In a memorandum opinion, dated July 1, 1940, the court, in view of the national emergency which might require large expenditures by railroads to promote greater efficiency in discharging their part in the prepared-

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ness program, denied the petition, without prejudice to renewal of the application to pay the interest in question on and after 120 days from July 1, 1940. By petition dated October 31, 1940, renewal was made and the court, by order dated November 4, 1940, set the matter for hearing on November 22, 1940, and at the request of the Choctaw committee this hearing was postponed to January 15, 1941. The matter is still pending before the court. In view of this situation, and the fact that the court has formerly authorized and directed the payment of interest on interest in connection with the coupon maturing January 1, 1934, we conclude that the plan should provide that in the event the court determines that the Choctaw & Memphis bondholders should be paid interest on each of the installments of interest maturing July 1, 1934, to January 1, 1941, inclusive, the effective date of the plan, such interest shall be paid in cash.

There are outstanding $3,524,000 of Choctaw & Memphis first-mortgage 5-percent bonds with unpaid accrued interest thereon to January 1, 1942, of $1,409,600. The Choctaw & Memphis is a leased line, and the record establishes the fact that its earnings are substantially in excess of its bond interest requirements. Upon a review of the record we conclude that the lien of these bonds should be preserved, and that the Choctaw & Memphis first-mortgage, dated January 2, 1899, amended to extend the maturity date of the bonds to January 1, 1969, and reducing the bond-interest rate to 4 percent per annum, should be assumed by the reorganized company and the property conveyed to that company. The $3,524,000 of bonds should remain outstanding in the hands of the public after they have been presented for the stamping with a legend showing their extension at the reduced interest rate, and in the case of bonds in coupon form for attachment of additional coupons for interest during the extension period. For the $1,409,600 of unpaid accrued interest the holders of the bonds should receive $1,409,600 of new first-mortgage 4-percent bonds of the reorganized company distributed ratably to the coupons maturing July 1, 1934, to January 1, 1942, inclusive, upon presentation in the case of bonds in coupon form of such coupons, or in the case of other bonds for stamping thereon of a legend showing the interest payment in new first-mortgage bonds.

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The Choctaw committee submits that the block allotment of securities to the Choctaw, Oklahoma & Gulf mortgage division is at least $300,000 less than should have been made to it. It contends for an allotment of new securities equal in market value to the cash realized from the abandoned lines from Ingersoll to Anthony and from Pittsburgh to Frisco Junction. According to the committee's petition, the trustees of the Rock Island received in cash, as salvage of these abandoned lines, $402,000, which represents actual depletion of the principal of the security for the Choctaw, Oklahoma & Gulf bonds, and should have been, but was not, under the terms of the Choctaw, Oklahoma & Gulf mortgage, paid to the trustee of that mortgage. In our adjustment of the formula earnings we normalized the earnings of the Choctaw mortgage division by eliminating the non-recurring losses in connection with the abandonment of the above-mentioned lines. In this way we recognized the depletion of the mortgage security and increased the earnings of the Choctaw mortgage division to reflect the actual earning power of the division after complete abandonment of the above-mentioned lines.

The record before us contains no analysis of the expenditures of funds by the trustees upon the various mortgage divisions of the debtor during trusteeship. We can not say that the sums representing the salvage recovered from the lines from Ingersoll to Anthony, and from Pittsburgh to Frisco Junction were not expended on the property of the Choctaw. If they were, no separate allotment should be made for them. We are satisfied that abandonments have occurred on other mortgage divisions, through which salvage was recovered but for which no block allotments have been made. No general study has been submitted for our consideration, to establish the rights of the various classes of creditors with respect to such salvage, and we are inclined to the view that any such detailed study in general would be impracticable. The testimony of record convinces us that in the block allotments to the Choctaw mortgage division we have gone as far as we should in recognizing the rights of the Choctaw bondholders to cash in the hands of the trustees of the debtor. No change should be made in the block allotment.

With reference to the excess Choctaw & Memphis earnings credited to the Choctaw, Oklahoma & Gulf in the allocation of new securities, we said in our prior report, at 242

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I. C. C. page 347 that it was improper to credit the Choctaw, Oklahoma & Gulf with the entire excess, and that such credit should be limited to the excess over 1.5 times interest requirements on the Choctaw & Memphis bonds. On further consideration, we are persuaded that there is no sufficient basis for such a limitation, and in the revised distribution of new securities approved herein the entire excess will be credited to the Choctaw, Oklahoma & Gulf.

And afterwards on, to wit, the 20th day of September, 1945 came the Choctaw Committee by its attorneys and filed *nunc pro tunc* as of September 29, 1941 in the Clerk's office of said Court a certain Exceptions to plan of reorganization certified by the Interstate Commerce Commission, etc., in words and figures following, to wit:

Filed September 20, 1945

Exceptions by the Choctaw Committee to Plan of Reorganization Certified by the Interstate Commerce Commission;

and

Enlargement and Amendment of Petition by Choctaw Committee for Payment of C&M Interest and Notice Thereof and of Hearing Thereon;

and

Notice of Hearing on Petition by Choctaw Committee for Reconsideration and Modification of Order of July 16, 1938 Respecting Formula Provisions.

The Choctaw Committee represents more than two-thirds of the C&M Bonds and the CO&G Bonds outstanding with the public. In any reorganization the *relative* treatment of existing security holders is of prime importance. That factor, plus an impelling desire for the benefits which it is believed will result from a speedy reorganization of the Rock Island Lines, is the background upon which the Choctaw Committee has considered the Plan of Reorganization as modified (herein referred to as the Plan), certified by the Interstate Commerce Commission to this Court. The Choctaw Committee has sought to weigh any lack of recognition of C&M and CO&G values against the benefits of prompt reorganization. That course explains the position of the Choctaw Committee more fully set forth below.

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Briefly, the Plan provides with respect to C&M Bonds: that the maturity of the C&M Bonds be extended to January 1, 1969; that the interest rate be reduced, after January 1, 1942, from 5% to 4%; that the principal of accrued and unpaid interest to January 1, 1942 be discharged by an equal principal amount of New First Mortgage Bonds of the reorganized company; that the C&M Lines be conveyed to the reorganized company, subject to the C&M mortgage*; that the reorganized company assume the payment of the principal of the C&M Bonds, and after January 1, 1942, the interest thereon at the reduced rate of 4% (see Supplemental Report of Interstate Commerce Commission, dated July 31, 1941, page 34, and Supplemental Order of same date, pages 3 and 4); and after referring to the petition of the Choctaw Committee now pending in this Court for the payment in cash of accrued and unpaid interest on the C&M Bonds, with interest on interest, provides that this Court may direct the payment, in cash, of interest on accrued and unpaid interest the principal of which is to be discharged by New First Mortgage Bonds aforesaid (see Supplemental Report aforesaid, pages 33 and 34, and Supplemental Order of same date, page 40). It is to be noted that the Plan itself provides that this Court may direct the payment of interest on interest in cash, and that, therefore, such a direction will not constitute a modification of the Plan by this Court. Apparently the Interstate Commerce Commission has suggested a compromise, to wit: that rather than the payment in cash of all accrued and unpaid C&M interest, with interest on interest, the principal of such interest be discharged by New First Mortgage Bonds of equal principal amount, and interest on interest

* The Supplemental Report, page 34, provides "the lien of these Bonds should be preserved"; the Supplemental Order, page 3, provides that the C&M mortgage "will be assumed by the reorganized company". Obviously, it is the intent that the conveyance of C&M Lines be subject to the C&M mortgage. Through apparent oversight: (a) the Supplemental Order, page 4, provides that all property to be conveyed to the reorganized company shall be free of liens except as expressly provided, and does not mention the C&M mortgage; and (b) the Supplemental Order, page 10, provides that the New First Mortgage shall have a first lien on all property of the reorganized company, subject only to tax liens, etc., and does not mention the C&M mortgage. We understand that the Bureau of Finance of the Interstate Commerce Commission agrees with our construction and has recommended that a Supplemental Report or correction sheet be filed to remove any question, and that such will be filed. If there be any doubt of intent as we have construed it, then we object and dissent.

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alone paid in cash—this coupled with an assumption by the reorganized company of the C&M Bonds, both principal and interest, after the effective date of the Plan.

The preeminence of the value and earnings of the C&M Lines has been repeatedly recognized in both the proceedings before this Court and before the Interstate Commerce Commission. This Court has already directed the payment of certain installments of C&M interest, in cash, with interest on interest. There is now pending before this Court the petition of the Choctaw Committee for the payment in cash of additional installments of C&M interest (coupons maturing from July 1, 1934 to January 1, 1940), with interest on interest. This petition originally came on for hearing before Judge Wilkerson on April 11, 1940, and in a memorandum opinion, filed July 1, 1940, Judge Wilkerson, in the light of what he deemed the then emergency, denied the petition, without prejudice to a renewal after 120 days following July 1, 1940. Subsequently, the petition was renewed and a hearing held thereon before Judge Igoe on January 15, 1941. At that hearing Judge Igoe suggested that request by the Choctaw Committee for a determination be postponed until after a plan of reorganization had been certified to this Court by the Interstate Commerce Commission. The Choctaw Committee assented and this Court directed that the petition be brought on for determination on five days' notice. Thus the matter now stands.

The Choctaw Committee now notifies the parties hereto that it amends its original petition for the payment of C&M interest to include a prayer for the direction of payment of C&M interest represented by coupons maturing July 1, 1934 to January 1, 1942, both inclusive, with interest on interest, and that it will bring on for hearing said petition, so amended and enlarged, on October 13, 1941.

The record upon which the payment of C&M interest is sought is already before this Court, by testimony and other evidence adduced at the hearings before Judge Wilkerson and Judge Igoe and briefs filed. Reference to that record is prayed. It discloses, and beyond doubt: that the C&M Bonds are a first lien on the C&M Lines; that these Lines have a value of about four times the principal amount of C&M Bonds outstanding; that C&M interest has been earned, even in depression years, about

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hree times over, with indication of current earnings of nore than double threefold; and that all of C&M earnings ave been used by the Trustees of Rock Island, without ccounting. One additional factor is pointed out, to wit, hat the Trustees of Rock Island now have cash in the mount of upwards of $13,000,000, whereas at the time of he first hearing on the Choctaw petition cash was a fraction f that amount. There is no doubt that the security for he C&M Bonds, as reflected in both property values and arnings, is of a value many times the obligation on the C&M Bonds, principal and interest, with interest on in-erest, and that the holders of those Bonds are entitled to ayment accordingly.

The purpose of the foregoing statement respecting the rovisions of the Plan for C&M Bonds and the petition for he payment of interest on C&M Bonds is to delineate the osition of the Choctaw Committee with respect to pro-isions for C&M Bonds under the Plan. That position is imple. If this Court directs, as provided by the Plan, the ayment in cash, on the consummation of the Plan, of in-erest on accrued and unpaid C&M interest up to January , 1942, then the Choctaw Committee does not propose to xcept to the Plan in so far as it relates to C&M Bonds, *rovided also,* there are no modifications of the Plan affect-ng the relative rights of the various classes of existing ecurities. The amended and enlarged petition for the ayment of C&M interest may be disposed of accordingly. f such interest on interest is not directed to be paid in ash, then the Choctaw Committee excepts to the treat-nent provided in the Plan for C&M Bonds, and must press ts petition for the payment of all accrued and unpaid C&M nterest, with interest on interest, in cash. In such cir-umstances, as the representative of C&M Bonds, the Choc-aw Committee can not assent to the Plan. Also, if there e modifications of the Plan affecting the relative rights f existing securities, then the Choctaw Committee must reserve its right to except to such modified Plan, for, as lready stated herein, in the consideration of the Plan by he Choctaw Committee, material weight has been given o relative rights and the possibility of prompt reorgani-ation.

The Plan provides with respect to CO&G Bonds that he holders receive certain amounts of new securities of the reorganized company in discharge of all claims.

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Exceptions by the Choctaw Committee, etc.

The Choctaw Committee feels that certain factors and elements urged before the Interstate Commerce Commission have not been given due recognition in the Plan, but that, nevertheless, if the relative rights of creditors as provided in the Plan are not modified, again more is to be gained by the holders of CO&G Bonds through prompt reorganization than through pressing exceptions which if recognized by appropriate modification must result in delay. Therefore, if the relative rights as provided in the Plan are maintained, the Choctaw Committee does not propose to except to the Plan with respect to the treatment of CO&G Bonds. However, if relative rights are modified, then the Choctaw Committee reserves the right to press exceptions to the Plan on behalf of CO&G Bonds. In such event, the exceptions pressed will be: (a) that the Plan does not recognize to the extent that it should either oil royalties received from CO&G lands and held by the Trustees or the proceeds of abandonments and sales of CO&G properties held by the Trustees; (b) that the earnings formula used by the Interstate Commerce Commission as the basis for the distribution and allocation of New General Mortgage Bonds and New Preferred Stock is incorrect and detrimental to CO&G Bonds and contrary to evidence adduced before the Interstate Commerce Commission; (c) that the CO&G Lines are entitled to a severance value which is not recognized by the Plan; and (d) that the earnings formula for the formula years used by the Interstate Commerce Commission as a basis for the distribution of new securities is detrimental to the holders of CO&G Bonds and incorrect in its treatment of revenues and expenses relating to the Little Rock Terminal.

In connection with the earnings and expenses at the Little Rock Terminal, the Choctaw Committee, on May 4, 1938, filed in this Court a petition for the construction of certain provisions of the earnings formula aforesaid. A hearing was held on said petition on May 25, 1938, before Judge Wilkerson. On July 16, 1938, Judge Wilkerson entered a memorandum decision denying the petition. Subsequently the Choctaw Committee filed a petition for reconsideration, and by leave of the Court, that petition has not been pressed, pending the certification of a plan of reorganization by the Interstate Commerce Commission to this Court. The Court directed that said petition for reconsideration might be brought on at any time by notice

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to the parties. This is notice to the interested parties that such petition for reconsideration will be brought on before this Court on October 13, 1941, in connection with the presentation of exceptions by the Choctaw Committee to provisions of the Plan as it affects the holders of CO&G Bonds.

By combining herein a statement of alternative positions by the Choctaw Committee, as the representative of both C&M Bonds and CO&G Bonds, and a statement of exceptions to be pressed, if forced to exceptions, together with notice bringing on for hearing the two pending petitions of the Choctaw Committee, it is intended, in so far as possible, to fairly apprise this Court and the interested parties of the course to be pursued by the Choctaw Committee at the hearings on the Plan scheduled to begin before this Court on October 13, 1941, and to have before this Court, for determination, all matters, including the pending petitions, relevant to those hearings.

Dated, September 29, 1941.

Respectfully submitted,

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
As a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds.

WRIGHT, GORDON, ZACHRY, PARLIN & CAHILL,
Attorneys for Choctaw Committee,
63 Wall Street,
New York, N. Y.

And afterwards, to wit, on the 17th day of April, A. D. 1942, being one of the days of the regular April term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable CHARLES E. WOODWARD, District Judge, appears the following entry, to wit:

Entered April 17, 1942

Order Fixing Time for Filing Briefs on Objections to Plan of Reorganization.

The Court having under consideration the plan of reorganization for the several debtors herein, on the Court's own motion, it is

ORDERED:

1. All briefs in support of objections to the plan of reorganization may be filed not later than May 6, 1942; answer briefs may be filed not later than June 5, 1942; and reply briefs may be filed not later than June 15, 1942.

2. Counsel may file in connection with their briefs a statement of their views of the effect of the wage increases of 1941 and the rate increases of 1942 upon the earnings available for interest; the Court also requests a statement of the interest paid and the interest unpaid on each of the mortgages since the proceedings were begun; all as heretofore ordered in Order 214-B entered November 28, 1941.

3. The supplemental report of the Interstate Commerce Commission dated April 6, 1942, in Finance Docket No. 10028, shall be a part of the record in this proceeding.

ENTER:

CHARLES E. WOODWARD,
United States District Judge.

April 17, 1942.

And afterwards on, to wit, the 24th day of July, A. D. 1943, came the Choctaw Committee by their attorneys and filed in the Clerk's office of said Court a certain Copy of Position of The Committee representing Bonds of Choctaw & Memphis Railway Co. etc. in words and figures following, to wit:

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS—EASTERN DIVISION

IN PROCEEDINGS FOR THE REORGANIZATION OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.	No. 53209.

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BEFORE THE
INTERSTATE COMMERCE COMMISSION

IN THE MATTER OF THE REORGANIZATION OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.	Finance Docket No. 10028.

Position of
The Committee Representing Bonds of the Choctaw & Memphis Railway Company and the Choctaw, Oklahoma & Gulf Railway Company
Respecting
The Application of the Group of Institutions Acting to Protect Their Interests as Holders of First and Refunding Mortgage 4% Bonds and Secured 4½% Bonds, Series A, of the Chicago, Rock Island and Pacific Railway Company for Amendement of Reorganization Plan.

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With the specific reservation hereinafter set forth, the Choctaw Committee has stated to the Group of Institutions Acting to Protect Their Interests as Holders of First and Refunding Mortgage 4% Bonds and Secured 4½% Bonds, Series A, of The Chicago, Rock Island and Pacific Railway Company, and now states to the Commission, that the Choctaw Committee acquiesces in and supports the amendment of the Rock Island Reorganization Plan proposed by said Group of Institutions in its Application verified July 16, 1943, and filed herein, with the understanding, however, that such acquiescence and support is conditioned upon similar action by the committees, groups and parties set forth in paragraph 6 of said Application.

The specific reservation of the Choctaw Committee, now urged upon the Commission, and the grounds therefor, are:

The value of the Choctaw & Memphis Railway Company property (several times the mortgage debt), its earnings

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(several times interest requirements), the withholding of those earnings from Choctaw & Memphis bondholders through the failure to pay earned interest when matured, the use of those earnings by the Rock Island system during the period of the reorganization proceedings and the relatively small principal amount of the Choctaw & Memphis Bonds, beyond controversion, we submit, establish that the value of the security for the Choctaw & Memphis Bonds is ample to pay in cash principal, interest and interest on matured and unpaid interest. Interest on interest was directed to be paid by the District Court on the coupon paid during the reorganization proceedings.

The Plan heretofore certified by the Commission to the District Court recognized the outstanding value of the security for the Choctaw & Memphis Bonds and provided for their assumption by the reorganized company with the annual interest rate reduced from 5% to 4%. The Plan so certified, however, left with the District Court the determination of whether interest on matured and unpaid installments of interest be paid in cash. The District Court has indicated (opinion, p. 57) that the Interstate Commerce Commission should itself determine whether the reduction in annual interest rate from 5% to 4% is, in all the circumstances, sufficiently compensated for—obviously having in mind the discretion which the Commission sought to invest in the District Court by permitting it to direct the payment in cash of interest on matured and unpaid interest.

The position of the Choctaw Committee is that the record before the Commission and the District Court forces the conclusion that, in the light of property values, earnings, non-payment of interest, use of earnings and the relation of security to debt, such reduction of annual interest rate is not fully compensated for, and that compensation through the payment in cash of interest on matured and unpaid interest installments is certainly no more than reasonable compensation. It is true that the priority of the lien of the Choctaw & Memphis Bonds is maintained and those Bonds secure through assumption the obligation of the reorganized company; however, it is equally clear from the record that the earnings of the mortgage security are several times interest requirements at 5%, that matured interest has not been paid because of the use of

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earnings for general purposes of the system, and that realization upon security would pay not only principal and interest in cash, but interest on matured and unpaid interest. It is submitted, therefore, that in all fairness interest on interest should be directed to be paid and that it is of no consequence that such a provision is not made respecting other bonds—and for the simple reason that no other bonds have the security value pertaining to the Choctaw & Memphis Bonds. At the time of the Choctaw & Memphis mortgage, it was a separate line and the rights of the holders of bonds secured by mortgage on that line are not completely fulfilled unless they receive through reorganization the full amount of their claim—a part of which is interest on interest—if the security permits. The position of the Choctaw & Memphis bondholders is accentuated by the fact that literally, as the records will show, the earnings of this small line to a great extent furnished the working capital for the whole Rock Island system during the leanest years of the reorganization period.

Therefore, the Choctaw Committee urges a further amendment to the Plan of Reorganization which will provide for the payment of such interest on interest in cash.

Dated at New York, New York,
July 23, 1943.

WRIGHT, GORDON, ZACHRY, PARLIN & CAHILL,
Attorneys for the Choctaw Committee
aforesaid.

And afterwards on, to wit, the 15th day of June, A. D. 1944 there was filed in the Clerk's office of said Court a certain Statement of Claim of the Choctaw Committee etc. in words and figures following, to wit:

Statement of Claim of the Choctaw Committee for Equitable Treatment Under Plan of Reorganization Approved by the Supplemental Report and Order Dated May 1, 1944, of the Interstate Commerce Commission.

Filed June 15, 1944

The Choctaw Committee supports the Plan of Reorganization approved by the Interstate Commerce Commission in its Supplemental Report and Order dated May 1, 1944, but urges upon the Court the claim of the Choctaw &

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Memphis Bonds to be paid interest on matured and unpaid instalments of interest in cash.

The Plan of Reorganization certified by the Interstate Commerce Commission to the Court provides that the holders of the Choctaw & Memphis Bonds shall be paid the full amount of the accrued and unpaid interest on said Bonds in cash and provides further that in the event the Court orders the payment of interest upon the instalments of interest accrued and unpaid, such interest shall be paid in cash. The Interstate Commerce Commission has thus recognized that the strong position of the Choctaw & Memphis Bonds requires the payment in cash of interest on interest, if the holders of such Bonds are entitled to interest on interest as part of their claim. The Commission did not undertake to decide whether the contract right of the Choctaw & Memphis Bonds calls for the payment of interest on interest.

In its order dated January 29, 1935, authorizing payment of the accrued and unpaid interest instalment due January 1, 1934 on the Choctaw & Memphis Bonds, this Court recognized that the holders of these Bonds were entitled to payment of interest on interest and directed that in addition to the interest due January 1, 1934, each holder of a coupon or claim for interest be paid interest on interest at the rate of five per cent. per annum from the due date of the interest payment to the date of payment. Interest on all subsequently accrued and unpaid interest should likewise be reflected in the total claim of these Bondholders and paid in cash under the Plan.

Dated: June 13, 1944.

Respectfully submitted,

WRIGHT, GORDON, ZACHRY, PARLIN & CAHILL,
Attorneys for the Protective Committee for the Holders of Choctaw, Oklahoma & Gulf Railroad Company Consolidated Mortgage 5% Bonds and Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds.

R. GRAHAM HEINER,
Of counsel.

And afterwards on, to wit, the 23rd day of June, A. D. 1944 came Aaron Colnon, Trustee by his attorneys and filed in the Clerk's office of said Court certain Suggestions in words and figures following, to wit:

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Suggestions of Aaron Colnon, Trustee, with Respect to First Mortgage Bonds of Choctaw and Memphis Railroad Company.

Filed June 23, 1

Aaron Colnon, one of the Trustees of the Estates of the several debtors herein, presents the following suggestions with respect to the First Mortgage Bonds of Choctaw and Memphis Railroad Company:

1. The claims evidenced by First Mortgage 5% Bonds of Choctaw and Memphis Railroad Company, due January 1, 1949 (Class 16 under order of court of January 23, 1934, classifying creditors) amount to $5,286,000, consisting of $3,524,000 principal of claim and $1,762,000 accrued and unpaid interest as of January 1, 1944. The Plan of Reorganization provides that the holders of the $3,524,000 principal amount of said bonds shall receive $1,762,000 in cash in satisfaction of unpaid interest thereon, upon presentation of the unpaid interest coupons; the $3,524,000 principal amount of said bonds will remain outstanding in the hands of the public as an obligation of the reorganized company after said bonds have been stamped with a legend showing that the maturity date thereof has been extended to January 1, 1969, and that the bond interest thereon has been reduced from 5 to 4 per cent per annum subsequently to January 1, 1944.

The $1,762,000 cash payment of unpaid interest is a part of the $38,011,922 total cash distribution provided for in the Plan. There are no cash payments or distribution of reorganization securities provided for with respect to the $3,524,000 principal amount of said bonds.

2. The Commission's Supplemental Report of May 1, 1944 contains the following:

> "XVII. Payments on Claims Before Plan Consummated.
>
> "Except as otherwise herein expressly provided, and except as it may appear that such treatment would be in conflict or inconsistent with the rights of the claimants, in the event that prior to the consummation of the plan, any payment shall be made in respect of a claim, other than a payment to be deducted from the cash distributable to creditors under the plan, reducing such claim as of January 1, 1944, below the amount stated in appendix A to this supplemental report, new securities of each class

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aggregating the amount of the reduction, with no-par common stock figured at $100 a share, shall be withheld from those otherwise distributable in respect of such claim, in the proportionate amounts that new securities are allotted to such claim in the actual distribution of new securities in appendix B, to each $1,000 principal amount, of the obligation in question. No securities so withheld shall be treasury securities."

3. Said Trustee believes that it is feasible and desirable that said Choctaw and Memphis Bonds be paid off at par in cash instead of being allowed to remain outstanding as an obligation of the reorganized company with their maturity extended to January 1, 1969, and respectfully submits:

(a) The cash resources of the principal debtor's Estate are sufficient to permit such payment being made without depleting the amounts required as a working fund for the operations of the trust estates, and for expenditures necessary to consummate the plan.

(b) Interest on said bonds from January 1, 1944 to the proposed extended date of maturity, January 1, 1969, at the rate of 4 per cent per annum, will amount to $3,524,000, all or substantially all of which will be saved.

(c) The retirement of said bonds will make the new First Mortgage Bonds of the reorganized company true First Mortgage Bonds on the entire properties of the reorganized company and will thereby improve the market value of the First Mortgage Bonds, as well as of all the junior securities of the reorganized company. It also will simplify the proposed capital structure and generally improve the Company's credit.

(d) Said payment will not require the withholding of any new securities or any reduction in the amount of new securities which are distributable under the Plan to any other classes of creditors.

WHEREFORE, said Trustee respectfully suggests that the Court enter an order requiring that claims evidenced by the principal of said Choctaw and Memphis Railroad Company First Mortgage Bonds be paid in cash in an amount

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equal to the face amount of said bonds, together with (a) the sum of $1,762,000 cash, representing full interest accrued and unpaid on said bonds to January 1, 1944, and (b) interest at the rate of four per cent per annum from January 1, 1944 to the date specified in said order for the payment of the principal of said bonds.

Respectfully submitted,

AARON COLNON.

And afterwards on, to wit, the 26th day of September, A. D. 1944 came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Filed September 1944

Petition of Trustees for Authority to Purchase Choctaw and Memphis Railroad Company First Mortgage Bonds.

Joseph B. Fleming and Aaron Colnon, Trustees of the estate of the principal debtor herein, respectfully show:

1. There are outstanding $3,524,000 principal amount of Choctaw and Memphis Railroad Company First Mortgage 5% Bonds with arrears of interest thereon to January 1, 1944, of $1,762,000, total $5,286,000. The Supplemental Report of the Interstate Commerce Commission of May 1, 1944 provides that said bonds shall be assumed by the reorganized company with their maturity date extended to January 1, 1969, with interest at the rate of 4% per annum from January 1, 1944, and that the $1,762,000 accrued and unpaid interest as of January 1, 1944 shall be paid in cash, amounting to $500 per $1,000 bond.

2. Petitioners are informed that certain bonds of said issue are offered for sale from time to time. The acquisition of such bonds by petitioners at a price commensurate with the assumption of liability, principal and interest, of said bonds by the reorganized company and the cash distribution to be made thereon for accrued and unpaid interest as aforesaid, will be advantageous to the Trust Estate and to the reorganized company. After consideration of the various factors involved, petitioners believe that such advantage will be substantially gained by purchases by petitioners of any or all of said bonds at a price not exceeding $1,450 per $1,000 bonds, said price to include brokers' fees and commissions.

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Order on Petition of Trustees for Authority, etc.

After providing for the cash distributable under the provisions of said Supplemental Report of May 1, 1944 and for all other cash requirements of the estate, petitioners will have sufficient cash in their treasury to pay for any and all of said bonds so acquired.

WHEREFORE, petitioners pray that the court enter an order authorizing them to purchase any or all of said Choctaw and Memphis Railroad Company First Mortgage Bonds at the most favorable prices at which the same can be bought from time to time but not exceeding the price above stated; and to pay for bonds so acquired out of cash available therefor in their treasury.

Respectfully submitted,
JOSEPH B. FLEMING,
AARON COLNON,
Trustees as aforesaid.

And on the same day, to wit, the 26th day of September, A. D. 1944 being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

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mber 26,
944

Order on Petition of Trustees for Authority to Purchase Choctaw and Memphis Railroad Company First Mortgage Bonds.

This cause coming on to be heard this day upon the petition of the Trustees for authority to purchase any or all of the outstanding First Mortgage Bonds of Choctaw and Memphis Railroad Company, and the Court having heard statements of counsel for petitioners and being fully advised in the premises, finds that the purchase by petitioners of any or all of said bonds at a price not exceeding that set forth in said petition will be advantageous to the trust estate and to the reorganized company. It is, therefore,

ORDERED:

That petitioners be and they are hereby authorized to purchase any or all of said Choctaw and Memphis Railroad Company First Mortgage Bonds at the most favorable prices at which the same can be bought by them from time to time, but not exceeding $1,450 per $1,000 bond, said price to include brokers' fees and commissions, and to pay for

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bonds so acquired out of cash available therefor in their treasury.

Enter:

IGOE,
Judge.

And afterwards on, to wit, the 31st day of October, A. D. 1944 came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Petition of Trustees Respecting Payment of Reconstruction Finance Corporation Loan.

Filed October 31 1944

And now come Joseph B. Fleming and Aaron Colnon, Trustees of the several estates herein, and respectfully show to the Court:

1. The continued improvement in earnings of the trust estate, and the consequent accumulation of cash, have caused the Trustees to give consideration to the advantages, from the standpoint of the trust estate, which would ensue from a satisfactory disposition of the claim of the Reconstruction Finance Corporation (hereinafter called the "R. F. C.").

2. The total claim of the R. F. C., as stated by the Commission in the pending plan of reorganization, including interest calculated to January 1, 1944, at 6% (except for a period of one year when it was calculated at 4%), is $20,849,015. The claim is based upon six promissory notes, executed by The Chicago, Rock Island and Pacific Railway Company, principal debtor herein, at various times in 1932 and 1933, aggregating the sum of $13,718,700, all due March 1, 1934, and bearing interest at 6% per annum. The notes are secured by collateral consisting of mortgage bonds of the principal debtor and mortgage bonds and other securities of its subsidiaries of an aggregate face amount of $40,199,950.54, plus an assignment of the debtor's distributive share in the funds of Railroad Credit Corporation. A more detailed description of such collateral is set forth in Petition No. 15, filed herein September 26, 1933 (P. R., p. 99). Interest is in default on all of the notes since October 1, 1933. The amount of the claim as stated by the Interstate Commerce Commission to January 1, 1944, is after crediting against the interest certain payments received by the R. F. C. as proceeds of pledged collateral.

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3. Under the plan of reorganization set forth in the Supplemental Report of the Commission, dated May 1, 1944, and now pending before this Court, the claim of the R. F. C. is allotted cash and new securities in the following amounts:

Cash	$ 3,732,172
Ten-year note (collaterally secured)	2,500,000
First Mortgage 4% Bonds	4,070,874
General Mortgage Income 4½% Bonds	5,992,850
5% Preferred Stock	4,461,710
No par Common Stock (stated at $100 a share)	11,143,768
Total cash and new securities	$31,901,374

The plan also provides (P. R., p. 4605) that in addition to the foregoing cash and securities "there shall be delivered and made over outright" to the R. F. C. the following:

1. An assignment of the debtor's share in the marshalling and distributing fund of the Railroad Credit Corporation	$131,541.14
2. Carrollton Branch First Mortgage bonds of The Chicago, Rock Island and Gulf Railway Company (together with a conveyance of the mortgaged property)	331,000.00
3. The rentals received by the debtor or its Trustees from the Carrollton Branch property from the time of default on the loan, less amounts spent by the Trustees on additions and betterments to said property approximately	208,707.75
4. The right to recover the value of the property salvaged from the abandoned Kankakee & Seneca Railroad, estimated at approximately	55,034.15
5. The right to recover the value of the salvage in certain mining machinery and equipment removed from mines of Rock Island Improvement Company, estimated at approximately	185,223.67
Total	$911,506.71

Of these items, the first will be paid to the R. F. C. when and as the money is received from distribution of funds

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by Railroad Credit Corporation. If not required to be paid over to the R. F. C., it would be retained by the trust estate.

The third item, comprising rentals received from the Carrollton Branch property (which is under lease to St. Louis-San Francisco Railroad Company), is required by the plan to be paid in cash. Items 4 and 5 likewise will necessitate the payment of cash to the R. F. C., the amount of which cannot be determined with accuracy at this time, but the foregoing figures are approximately correct. The total of these four cash items, $580,506.71, together with the $331,000 Carrollton Branch First Mortgage bonds, must be added to the $31,901,374 of cash and securities referred to above; making a grand total of $32,812,880.71 cash and securities allotted to the R. F. C. under the plan, which would remain in the trust estate if the R. F. C. claim should be paid.

4. R. F. C. was formed under the Reconstruction Finance Corporation Act approved January 2, 1932, to provide emergency financing facilities for financial institutions, and to aid in financing agriculture, commerce and industry; and it was authorized, with the approval of the Interstate Commerce Commission, to make loans to aid in the temporary financing of railroads engaged in interstate commerce when, in the opinion of the Board of Directors of the R. F. C., such railways were unable to obtain funds upon reasonable terms through private banking channels or from the general public.

In 1932, the principal debtor, with the approval of the Interstate Commerce Commission (Finance Docket No. 9384; 184 I. C. C. 597; 184 I. C. C. 735), borrowed from the R. F. C., the sum of $10,000,000, for the following purposes:

1. The payment of one-half of the principal amount of $8,250,000 bank loans maturing August 1, 1932	$ 4,125,000.00
2. To meet fixed interest obligations on various bonds	4,621,519.50
3. To apply on account of maturing principal installments of equipment trust obligations	1,253,480.50
Total	$10,000,000.00

The bank loans referred to had been made previously by the principal debtor for the purpose of enabling it to

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meet equipment trust obligations, principal and interest, and other corporate purposes, all of said bank loans being secured by mortgage bonds of the debtor and its subsidiaries. One of the purposes of the loan from the R. F. C. was to enable the debtor to pay half of the bank loans, and upon such payment the R. F. C. received half the collateral then securing each of the same. The remaining portions of said loans aggregating $4,125,000, remained outstanding in the hands of the banks, as more fully described in said Petition No. 15, and have been dealt with in these proceedings.

On February 28, 1933, the prinipal debtor, with the approval of the Interstate Commerce Commission (Finance Docket No. 9835; 189 I. C. C. 522) obtained an additional loan from the R. F. C. of $3,718,700, to enable it to meet when due the principal of and interest on equipment trusts and interest on mortgage bonds due March 1, 1933, and April 1, 1933.

The Interstate Commerce Commission and the Board of Directors of the R. F. C. found in each instance that the Railway Company was unable to obtain the necessary funds upon reasonable terms through private banking channels, or from the general public, and the loans from the public treasury were approved in accordance with the policy of the above mentioned Act, to enable the Railway Company to carry on during the depression then existing.

5. All interest on said loans due prior to October 1, 1933, was paid in cash at the rate of 6% per annum, the amount thereof attributable to the period between the institution of these proceedings on June 7, 1933, and October 1, 1933, being approximately $258,000. Since October 1, 1933, the R. F. C. has from time to time received payments through the pledged collateral aggregating approximately $1,335,880, which sums have been credited against accruing interest. Allowing for such payments and credits, the unpaid interest on the $13,718,700 principal of said loans if adjusted to 4% from the date of bankruptcy to December 31, 1944, would be approximately $5,000,000, making a total for principal and interest to said date of $18,718,700.

6. The R. F. C. loans to the debtor were made from public funds. Their purpose was to protect the public interest by enabling the Railway Company to weather the storm of the depression and to avert the loss to the public and to the Railway Company's security holders which

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would have been entailed by the Railway Company's failure to maintain its transportation system in proper condition for service to the public or by its inability to meet its maturing obligations. In the light of the conditions then existing, the R. F. C., the Interstate Commerce Commission and the Railway Company itself considered that the making of these loans was a wise and salutary measure and in the public interest. The attitude of the R. F. C. throughout these proceedings has been consistent with the public interest as well as that of the debtor and its security holders; it has stated that in order to be helpful, it is willing to accept the fact of the debt plus 4 per cent interest to date of payment.

7. The cash position of the trust estate is such that, in addition to the $38,011,000 required for distribution under the reorganization plan now pending in this Court, the Trustees have sufficient funds to pay the R. F. C. loans in full, with interest at not to exceed 4% per annum to the date of such payment, without endangering their ability to meet their other cash requirements and to conserve a satisfactory working fund. It would be advantageous to the trust estate to make such payment, not only because of the fact that the loans were made from public funds and were borrowed in an emergency largely for the benefit of the other creditors, but because such payment would release the cash and new securities allotted to the claim as described above.

As pointed out in paragraph 3 of this petition, $3,732,172 of the cash which would be required for such payment is included in the $38,011,000 distributable under the reorganization plan, and, as shown in the same paragraph, approximately $580,506.71 would be required for the additional cash payments to the R. F. C. required by the plan, but which are not included in the said sum of $38,011,000. The payment in cash of the R. F. C. claim would convert into treasury securities the new securities allotted to the R. F. C. under the plan, aggregating $25,669,562 (the common stock being stated at $100 per share); and would restore to the reorganized company all of the inter-system treasury securities which the plan provides should be pledged under the proposed $2,500,000 10-year note, and in addition thereto the $331,000 Carrollton Branch first mortgage bonds referred to in paragraph 3 hereof.

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The new securities to be issued under the plan are now being traded in on the New York Stock Exchange, and at the present market prices thereof the value of the cash and new securities allotted to the R. F. C. under the plan is not less than the amount of cash which would be required to pay the said claim in cash, with interest at 4% per annum. Such payment would be of substantial benefit to the credit of the reorganized company and to the value of the new securities to be issued in reorganization.

For said reasons and in view of the greatly improved cash position of the Trustees, such payment seems advantageous to the trust estate.

WHEREFORE, your petitioners respectfully pray that the Court enter an order authorizing and directing them to pay in full the claims of the R. F. C. aggregating $13,718,700, with interest thereon from the date of bankruptcy to the date of payment, at not to exceed 4 per cent per annum, and requiring that all of the collateral securing the said notes be returned and all of the new securities allotted to said claims of the R. F. C. under the plan of reorganization, be withheld, said collateral and said new securities to be treasury securities.

Respectfully submitted,
JOSEPH B. FLEMING,
AARON COLNON,
Trustees as aforesaid.

[Verification omitted in printing.]

And afterwards on, to wit, the 6th day of August, A. D. 1945, came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Statement of Mr. Marcus Bell in words and figures following, to wit:

Filed August 6, 1945

Statement of Mr. Marcus Bell on Behalf of the Trustees, Contained in the Transcript of the Hearing Held on October 31, 1944, on Petition for Order No. 328, entitled "Petition of Trustees for Leave to Pay the Reconstruction Finance Corporation Loan".

The Clerk: Re Chicago, Rock Island & Pacific Railway Company. Petition of Trustees for leave to pay R. F. C. loan.

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Mr. Bell: This is an application by the Trustees, your Honor, to pay off in cash the claim of the R. F. C. The Trustees have had it under consideration for a long time, and, after a consideration of their present cash position, have reached the conclusion that they should recommend it to the Court. The claim has been allowed in the pending plan in the sum of about $20,000,000. Your Honor is familiar with the situation. There are six notes to the R. F. C. aggregating $13,718,700. They bear 6 per cent on their face and their claim was approved and allowed at 6 per cent. They are secured by large blocks of collateral.

The Trustees have felt that by paying the money they could get a 4 per cent settlement from the R. F. C., and they have therefore recommended it to the Court and now recommend it to the Court. We have on hand today a little over $100,000,000 in cash. That is ample to pay the R. F. C. in full, with interest at 4 per cent. It is ample to take care of the thirty-eight million that is required by the pending plan of reorganization and for all the immediate cash requirements of the trust estate, so far as we can see them, and still protect our working fund.

Considering our cash position today, since the 1st of January we have earned about $23,000,000 above taxes, that is, up to the 30th of September. On the 1st of January we had about $82,000,000. Today we have about $102,000,000, of which $80,000,000 is invested in government securities producing a very moderate return. All of it is under one per cent. Our financial situation since the first of the year has improved very remarkably. As I told you, there is an increase of about $20,000,000 in the cash, and in addition we have paid off all of the old equipment trusts, which bore 3½ per cent interest or 3 per cent or 2½—all the old equipment trusts of the railway company. The only equipment trust obligations now outstanding are those of the Trustees.

We have purchased and paid for in cash the cash payments on new equipment, $2,300,000. We have paid for our additions and betterments $3,334,000 up to October 31st. We have spent all of that money and still we have about $20,000,000 more in cash than we had. The total of that is around $32,000,000 that we are better off in our situation than we were on the 1st of January, when this plan was dated.

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Well, the Trustees have not been satisfied with that. What I have told you are the facts. We have no large payments immediately ahead of us until the December 15th installment of the income tax, which will be $5,400,000. The Trustees, as I say, were not satisfied with that but have asked to have a forecast made of the outlook. We would be foolish to pay $18,000,000 to retire this claim if the outlook was not good, so the Trustees have had the best forecast made up to June 30, 1945—the best their staff is capable of making of the forecast of cash, and I should like to present a copy of it. A copy has been sent to all of the creditors' committees. I should like to present a copy and put it in the record here.

That shows, up to June 30, 1945, our total cash and United States government securities estimated at $113,000,000. That is what we will have up to next June so far as we can determine now, and I assure you that this is a conservative estimate.

Now, we take out below all of the matters that we can foresee that we will have to pay, including the cash required to pay the principal and interest—that is the last item—the cash required to pay the principal and interest on the R. F. C. notes, $18,480,000, including the cash required to be paid under the reorganization plan, including the fixed and contingent interest and preferred dividends on the new securities to be issued under the reorganization plan as of January 1, 1944, and we find that our working fund is protected; we still will have $10,000,000.

We will have paid the Choctaw & Memphis bonds, $3,524,000, for which the petition of the Trustees is now pending, and we will have reserved—if you will notice particularly the line "Total Cash and United States Government Securities Estimated to be Available as of June 30th," that is after paying the current installments of Federal income taxes in March and June of next year, and the first two items below, $16,418,000 each, as of June 30, 1945, will represent the four next succeeding installments of Federal income taxes which won't be due until September and December, 1945, March and June, 1946.

In other words, we will have next June 30th $10,000,000 cash, plus $32,800,000 reserved for the ensuing four installments of Federal income taxes. We will have set the money aside for the year, for the next year's payment.

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Well, when the Trustees studied those figures they, of course, reached the conclusion that they could pay this R. F. C. loan, and the next thing to decide, was it desirable to pay it. The R. F. C., as set forth in this petition, gets—let's see what they do get. If your Honor would like to follow it I can give you a picture of it right in the plan here of May 1, 1944.

The Court: It is mentioned in the petition, as I recall.

Mr. Bell: Yes, it is set forth. First they get $3,732,000 cash. We have to pay them that in cash. Well, that comes out of the thirty-eight million. That comes out of the thirty-eight million in the reorganization plan. But that isn't all the cash they get. In the next part of that petition, on page three of the petition, the plan says there shall be delivered in addition and made over outright in absolute ownership to the Reconstruction Finance Corporation certain additional amounts of cash. There is $131,000 coming to us from the Railroad Credit Corporation. We have to pay that to them.

Item No. 3 on page three is back rentals on the Carrollton Branch, which we collect from the Frisco Railroad, and Item 2 is the entire bond issue of the Carrollton Branch. Item 4 is some salvage we took up from the Kankakee and Seneca. The amount of it is approximately correct, $55,000. Item 5 is the cash value of certain mining machinery that we moved from mines they had a lien or a mortgage on.

Now, you add those together and you have another $900,000. In addition to that there is a $2,500,000 collaterally secured note that has to be paid sometime. You add your 3,732,000, add your 2,500,000, and you have 6,200,000. Add your 900,000 and you have 7,100,000 that we have to pay them anyway.

Now, is it wise to pay them? Look what else they get. They get four million first mortgage bonds, they get nearly six million income bonds, they get four and a half million preferred stock, and eleven million dollars, taken at $100 a share, common stock. The total of those is set out in here and that comes up to some thirty-one million, which, if paid, would come right back into the treasury of the Trustees.

Now, this loan is bearing interest. The interest and dividends on the new securities—and we have earned

enough to pay the interest on those new securities, including the dividends on the preferred stock at 5 per cent, full dividends—that comes to $755,000 a year. That every day runs on and on, and we have reserved cash enough to pay that for everybody but we want to avoid paying it to the R. F. C. by buying in their claim. The interest on their old claim at 6 per cent per annum is $823,000. At 4 per cent per annum it is $546,000 a year. That is nearly $46,000 a month, $1,500.00 a day. The interest on that at 4 per cent. We have the cash, it is not drawing any money, not producing any substantial return, it is idle and this ought to be disposed of. Why? Because it is for the benefit of the whole trust estate to get this large claim out of the way.

Now, why do we pick on this claim? This claim gets more per thousand dollars of indebtedness, of principal indebtedness, than any claim in the reorganization. That is because it had ample collateral, and the Commission treated it on the basis of the collateral. It is getting more than the General Mortgage, more than anybody else in the picture. No better use can be made for the cash than to take it and retire this claim. The Trustees feel it is their duty to recommend to you that this be done now.

And afterwards, to wit, on the 8th day of November, A. D. 1944, being one of the days of the regular November term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Entered November 8, 1944

Order Respecting Payment of the Claim of Reconstruction Finance Corporation.

On this day coming on to be heard the petition of the Trustees respecting the payment of the claim of Reconstruction Finance Corporation (hereinafter referred to as "R. F. C.") against the principal debtor herein, and the Court having heard the statements of counsel, having considered the reports of the Trustees currently filed herein, and being fully advised in the premises, finds:

1. The Trustees have sufficient funds to pay in cash the principal amount of the claim of the Reconstruction Finance Corporation, evidenced by six promissory notes of the principal debtor of an aggregate face amount of $13,718,700, with interest thereon from the date of the institution of

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these proceedings to the date of payment, at not to exceed 4% per annum, without endangering their ability to meet the other cash requirements of the trust estate.

2. The satisfaction of said claim and the return to the treasury of the trust estate of the securities pledged as collateral therefor would be advantageous to the trust estate, would not be in conflict or inconsistent with the rights of other claimants herein, and would be of substantial benefit to the credit of the reorganized company and would enhance the value of the new securities to be issued in reorganization.

3. Reconstruction Finance Corporation has appeared by Counsel in open Court, and stated that its attitude with respect to the pending petition of the Trustees is as follows:

(a) R. F. C. will accept in full discharge of its claim against The Chicago, Rock Island and Pacific Railway Company a cash payment equal to the principal amount of its claim ($13,718,700.00) plus unpaid interest at the agreed rates to the date of bankruptcy plus interest at the rate of four per cent (4%) per annum from the date of bankruptcy (June 8, 1933) to the date of payment, less cash payments received by R. F. C. from the date of bankruptcy to the date of payment upon condition that payment on said terms be approved by a valid and final order of the United States District Court having jurisdiction of the bankruptcy proceedings, and payment is made on or before December 15, 1944, or such later date as R. F. C. may hereafter agree to; or in the alternative

(b) to be helpful in the preservation and consummation of the plan R. F. C. will upon or within six (6) months after the consummation of the plan sell to the reorganized company all securities and other allotments to which R. F. C. is entitled under the plan at the principal amount of R. F. C.'s claim ($13,718,-700.00) plus unpaid interest at the agreed rates to the date of bankrutpcy plus interest at the rate of four per cent (4%) per annum from the date of bankruptcy (June 8, 1933) to the date of sale, less cash payments received by R. F. C. between the date of bankruptcy and the date of sale.

It is, therefore,

ORDERED:

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That the Trustees be and they hereby are authorized and directed to discharge the indebtedness, principal and interest, of The Chicago, Rock Island and Pacific Railway Company, principal debtor herein, to Reconstruction Finance Corporation by payment in full in cash of the principal amount of said indebtedness, $13,718,700, plus any unpaid interest at the agreed rates to the date of bankruptcy, plus interest at the rate of 4% per annum from the date of bankruptcy (June 8, 1933) to the date of payment, less cash payments received by Reconstruction Finance Corporation from the date of bankruptcy to the date of payment. Upon such payment, all of the six notes of the principal debtor to the Reconstruction Finance Corporation, more fully described in the petition of the Trustees herein, and all of the collateral securing the said notes shall be surrendered to the Trustees.

ENTER:

MICHAEL L. IGOE,
Judge.

Dated November 8, 1944.

And afterwards on, to wit, the 11th day of May, A. D. 1945 there was filed in the Clerk's office of said Court a certain opinion in words and figures following, to wit:

Filed April 11, 1945

Opinion of Court Relative to Interest on Unpaid Installments of Interest on Choctaw & Memphis Bonds.

The modified plan of reorganization provides for a cash distribution of $38,011,922, $1,762,000 of which shall be paid on account of matured and unpaid interest on Choctaw & Memphis First Mortgage bonds to the effective date of the plan, January 1, 1944. The Committee representing holders of Choctaw & Memphis bonds contended before the Commission that the earnings of the property securing the bonds have been such that interest on matured and unpaid interest installments should be paid. The plan provides that the allowance of interest on interest should be determined by the court. The Bondholders' Committee computes that such interest to July 1, 1944 would amount to $555,030 at 6% per annum, the legal rate of interest in Pennsylvania where the coupons are payable, or $462,525 at 5% per annum, the coupon rate.

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The Committee contends that the federal law as to interest payments is applicable in this proceeding, and that under such law, as found in the decisions of the Supreme Court and other federal courts, holders of interest coupons are entitled to receive interest thereon from their dates of maturity. With the first part of this proposition, the court agrees; *Prudence Corporation* v. *Geist*, 316 U. S. 89. The court is unable to agree that the federal rule of law applicable in this proceeding is to be obtained from the cases cited in the Committee's brief. The obligors of the coupons involved in these cases were not insolvent and their failure to pay interest arose from unwillingness and not inability. That a solvent debtor which fails to pay money when due should pay interest thereon is simple justice, even though the obligor's refusal is based on a bona fide belief that it has a good defense. But a proceeding under Section 77 of the Bankruptcy Act presents entirely different considerations; and this is true even though earnings were realized from the mortgaged property in excess of interest requirements. Such earning power is an important factor in determining the value of a claim based upon the bonds. The existence of earnings equal to or exceeding interest requirements does not mean that the bondholders are entitled as of right to receive the cash on the interest due dates. Such theory is inconsistent with Section 77(b)(1), which provides that a plan of reorganization shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character, or otherwise. As this court said in its previous opinion, the subject-matter of reorganization under Section 77 is the debtor's financial structure. No mortgage creates a lien upon earnings derived from the Trustees' operations. See Order No. 45-A, entered May 2, 1934; also par. (c)10 of Section 77 of the Act. The segregation and allocation of earnings and expenses by mortgage divisions are made in order to determine the relative rights of the different classes of bondholders and the resulting mode and extent of their participation in a plan of reorganization.

An installment of interest due January 1, 1934 was paid by order of court on February 5, 1935, together with interest on said installment at the rate of 5% from the due date to the date of payment. It was this authorization of pay-

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ment of interest on interest which led the Commission to provide that the question of further payments of interest on interest should be left for the court's determination (see printed record, p. 3381). It appears on the face of said order of February 5, 1935 that a large majority of the several bondholders' committees and other parties assented thereto and that the order specifically provided that the payment so authorized should not be deemed a precedent.

Two other mortgage lines, Chicago, Rock Island and Texas and Chicago, Rock Island Gulf Main Line earned or had credits plus earnings in excess of bond interest requirements, and each is given block allotments of new first-mortgage bonds equal to full principal and interest. No allowance for interest upon interest was made in any form.

The court may at any time determine and make equitable adjustment between interested parties with respect to any use which may have been made of earnings or income of any portion of the Trust Estate; but no equity arises *ipso facto* from the existence of such earnings of a mortgage division or their non-application to interest payments under the mortgage. The Choctaw & Memphis Mortgage does not stipulate for interest upon arrears of interest; therefore, there is no contract right thereto. Nor does the court perceive any facts or circumstances whereby these bondholders are equitably entitled to the additional interest.

In a separate opinion approving the plan of reorganization, with certain corrections and clarifications, the court has stated that the Choctaw & Memphis bonds will be left undisturbed and not be affected by the plan in any way. With that disposition of the subject, it is unnecessary to award compound interest in order to give the bondholders their full measure of rights. The request for interest upon interest is denied.

Counsel for the Trustees are requested to prepare an appropriate draft of decree in conformity with this opinion and to submit the same to the court upon not less than 10 days' notice to all parties entitled thereto.

MICHAEL L. IGOE
Judge, United States District Court.

And to wit, the 14th day of May, A. D. 1945 there was filed in the Clerk's office of said Court a certain Opinion of the Court in words and figures following, to wit:

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Opinion of the Court.

Filed May 14,

On June 25, 1943 the court entered an order referring the proceeding back to the Interstate Commerce Commission for consideration of certain matters in respect of which the court disapproved the plan of reorganization then before it. After further hearing held on September 1, 1943 the Commission, by supplemental report and order dated January 3, 1944, approved a modified plan. Various petitions for its modification were filed with the Commission during the 60-day statutory period.

The court now has for consideration the Commission's report and order of May 1, 1944, in which said petitions are denied and the plan of January 3 is restated with some slight changes made on the Commission's own motion. Objections to the modified plan were filed by various parties and hearing thereon was held June 23, 1944.

In its prior opinion, the court stated that the question of what portion, if any, of shares of new common stock allotted to the First & Refunding bonds because of their second lien on the General Mortgage properties, should be allotted to the General Mortgage bonds in order to afford full compensatory treatment thereto, should be answered in the first instance by the Commission. The Commission has done this; it finds that the allotment of new securities by the modified plan to the General Mortgage bondholders represents the equitable equivalent of the rights surrendered by such bondholders or of any loss of seniority which may result from such allotment and that it is not necessary, in order to provide full compensation to said bondholders, that any of said shares of new common stock be allotted to them. The Commission's supplemental report of January 3, 1944 contains a full discussion and examination of the relevant facts and circumstances which it deemed essential to this determination; afterwards, it reexamined the question in the light of the General Mortgage Committee's objections to that determination, and in its supplemental report of May 1, 1944 stated the reasons for its adherence to its previously stated conclusion. The General Mortgage Committee has interposed no objections to the modified plan now before the court. Notwithstanding, the court has carefully reviewed the data upon which the Commission made its decision; believing that the Commission's finding is supported by evidence and is in accord

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with legal standards, the court accepts the finding that the new securities represent the equitable equivalent of the rights surrendered and considers it unnecessary to inquire whether or not under the Supreme Court's decisions in the *Milwaukee* and the *Western Pacific* cases, the Commission's finding on this subject is binding on the court.

The modified plan provides that the appointment of members of the reorganization committee shall be subject to ratification by the court; it also fixes January 1, 1944 as the effective date of the plan in lieu of the former date, January 1, 1942. These changes are in accord with the views expressed in the court's former opinion.

The Commission's action with respect to certain other suggestions made by the court should be noticed.

Distribution among creditors of Available Cash and Additional First Mortgage Bonds.

The order of June 25, 1943 required the Commission to determine the amount of cash available for distribution among creditors as of December 31, 1943. A statement submitted by the management to the Commission at the hearing on September 1, 1943 showed that after making provision for setting aside the sum of $43,373,000 as a reserve to provide for various cash requirements, the sum of $38,290,742 would be available for distribution among the debtor's creditors or for other purposes as of January 1, 1944. The modified plan provides accordingly for the distribution of $38,011,922 of cash, of which $1,762,000 represents accrued and unpaid interest to January 1, 1944, the effective date of the modified plan, on Choctaw & Memphis bonds. The remainder is to be distributed among the creditors on the basis of the relative earnings of the various mortgage properties as determined by the allocation of new securities approved in the modified plan; the amount is equivalent to 8 years' interest on the new first-mortgage bonds, 4 years' interest on the new income bonds, 2 years' dividends on the new preferred stock and a dividend of $2.50 per share on the new common stock. A total of $12,409,600 of new first-mortgage bonds (comprised of $11,000,000 originally reserved for sale or pledge to provide new money, and $1,409,600 originally allocated to Choctaw & Memphis bondholders for unpaid and accrued interest instead of payment in cash as now provided) is to be distributed among the secured creditors, other than

Choctaw & Memphis bondholders, by the method approved for the distribution of the other new first-mortgage bonds under the plan. This distribution of bonds and cash is acceptable to all parties in interest except the debtor and a group of Convertible bondholders.

Objections of Debtor and of the Protective Committee for Preferred Stockholders.

The modified plan approves the total capitalization for the reorganized company of $356,117,327 (taking the new common stock at $100 a share), a decrease of $12,010,083 from the total capitalization previously approved. It is objected that this reduction is not in accord with legal standards; that there is no finding by the Commission that the assets as of January 1, 1944, the effective date of the plan, are of the value of only $356,117,327, but that the Commission made a definite finding that the capitalizable assets were of the value of $368,127,410 as of January 1, 1942, and that adding the net earnings made between January 1, 1942 and January 1, 1944 of $72,000,000, it is apparent that the value of the assets as of January 1, 1944 is $72,000,000 greater than the value as of January 1, 1942; or, if the cash distribution of $38,011,922 is taken into account, there still remains an excess of $34,000,000 over the January 1, 1942 value.

On January 1, 1942, cash on hand amounted to $16,076,185 (printed record, p. 3681). It does not appear that this sum entered into the Commission's valuation of the capitalizable assets of that date, and there is good reason for the omission, in view of the fluctuation to which this item is normally subject. But aside from that consideration, the management's statement above referred to show that after the application of $38,011,922 cash to creditors' claims, substantially all of the remaining cash on hand as of January 1, 1944 would be needed as a reserve to provide for Federal taxes for 1943, for payment of new equipment, for future replacements and improvements, and for working capital and reorganization expenses.

The Commission's report states that the decrease of $12,010,083 in total capitalization is the net result from the reduction of $13,034,916 in equipment obligations during the period January 1, 1942-January 1, 1944, together with the net increase of $1,024,833 in new common stock, which increase was warranted by the reduction in fixed annual

cash requirements of the reorganized company resulting from the reduction in the amount of equipment obligations. The larger portion of the $13,034,916 principal of equipment obligations so paid was of the Series IQ Certificates, which covered equipment acquired by the debtor at various times during the period 1920-1930. The refunding of the original equipment obligations, first in the form of Trustees' certificates of indebtedness (Order 42-K) and later by Series IQ Certificates, was dictated by the necessities of the situation and the advantages to the Trust Estate. But the court believes that the reorganized company should not be burdened with any form of capital obligations representing this equipment. The same is true as respects the other equipment obligations, except as to the certificates which remain unmatured at the consummation of the plan, the payment of which must necessarily be assumed by the reorganized company. In this connection, it may be noted that the new first mortgage and the general mortgage will contain provisions whereby additional bonds may be issued thereunder, respectively, for the acquisition of new rolling stock to the extent of 75 per cent of the net cost thereof, provided the term of said bonds shall not be more than 15 years and shall not exceed the life of the rolling stock so acquired and that a sinking fund must be created sufficient to retire the bonds within their term. These provisions, which the court believes are sound, are illustrative of the principal that equipment should not be represented, as far as it is possible to avoid so doing, by capital obligations of a permanent or long-term nature.

The court is unable to agree that there is no finding by the Commission that the capitalizable assets as of January 1, 1944 are of the value of only $356,117,327. The $24,943,916 of equipment obligations which comprised a part of the $368,127,410 total capitalization of January 1, 1942 were to be assumed by the new company and paid on the several maturity dates, the last becoming due in 1950. No provision was made for the issuance of new securities therefor, either directly or in reimbursement of the new company's treasury. The modified plan is identical in this respect, except that it takes account of the amounts paid to the new effective date of the plan. The court finds no uncertainty in the Commission's report as to the precise factors upon which its ultimate capitalization of $356,117,327 is based.

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The debtor further claims that the proposed distribution of an additional $12,409,600 of first-mortgage bonds to secured creditors and the proposed distribution of $38,011,922 cash among all creditors are not in accord with legal standards. The debtor claims that this distribution of securities and cash is a distribution from earnings accrued since 1942, whereas, the new securities issuable under the plan give no interest in anything which has come into existence prior to January 1, 1944. The debtor argues that such distribution implies the theory that the plan become effective as of January 1, 1936, *i. e.*, by relation back of the 8 years' interest on the new first-mortgage bonds. But that 8 years is simply a part of the formula used to derive the fair share of each creditor; if the available fund had been larger, the period would have been larger and vice versa. As the Commission said in its report of January 3, 1944, the distribution of the available cash among the creditors simply produces a reduction of their claims. With the exception of the General Mortgage bondholders and the Choctaw & Memphis bondholders, there remains a deficiency in creditors' claims, even after the additional new securities and cash distribution. Whether the cash, both that to be distributed and that which released the additional $12,409,600 of first-mortgage bonds, was earned in whole or in part before January 1, 1942, or thereafter, is immaterial in this connection. The creditors are entitled thereto; and as their claims are still not wholly satisfied, the stockholders are not entitled to share in the distribution.

Objections of Group of Convertible Bondholders.

Under the plan previously before the court, the holders of convertible bonds, as general creditors, were allotted 4⅓ shares of new common stock for each $1,000 of claim. This is increased to 4.967 shares, plus $12.42 cash.

The objections of this group are largely a restatement of those previously, made, *e. g.*, failure to take into account increased earnings, capital expenditures, payment of equipment obligations, cost of reproduction of the properties, issuance of new senior securities in respect of free assets, etc.

All of these matters have already received consideration by the Commission and by the court. There is no need to restate the contentions in detail or the reasons which led to their rejection.

The reduction in capitalization is objected to. The court's conclusion that the Commission's finding of a capitalizable value of $356,117,327 is based on precise factors set forth in its report and is in accordance with legal standards, has already been expressed. But even if the Commission had concluded otherwise and had left the formerly proposed capitalization of $368,127,410 unchanged, none of the $12,010,083 of additional securities would redound to the benefit of the convertible bondholders for the reason that the balance of unsatisfied claims of the secured creditors would absorb the entire amount. The additional amount of common stock and the cash which the convertible bonds receive under the modified plan, are attributable to their interest in the unmortgaged assets.

Little Rock & Hot Springs Western Bonds.

Under the former plan, the $1,140,000 of these bonds were to receive, per $1,000 bond, $42.26 first mortgage bonds, $188.88 income mortgage bonds, $152.84 in preferred stock and $63.44 common stock. Under the modified plan, the amount of first-mortgage bonds is increased to $81.98, together with $77.11 cash. The objections are the same as those previously made, examined in detail, and rejected.

Choctaw & Memphis Bonds.

There are two matters which require consideration: First, the application of Choctaw & Memphis bondholders for payment of interest upon matured and unpaid installments of interest on these bonds; and, second, the suggestions of Trustee Colnon that the principal of the bonds, together with unpaid interest accrued thereon at the coupon rate of 5% from January 1, 1944, and thereafter interest at the rate of 4% to a date of payment as may be fixed by the court, be paid in cash. The suggestions of the Trustee were objected to by the Committee representing the bonds of this issue.

(1) No objection is made, and none could be, to the provision of the plan that if there is a legal right to interest on interest it should be paid in cash. The question of the right to interest on interest will be treated in a separate opinion and order. See *In re New York, New Haven and Hartford Railroad Company*, 147 F. (2d) 40, 53-54.

(2) The Commission's plan of July 31, 1941 provided that the lien of the Choctaw & Memphis bonds should be preserved, their interest rate reduced from 5% to 4%, and

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their maturity date extended from January 1, 1949 to January 1, 1969 with accrued and unpaid interest to the effective date of the plan payable in the form of an equal face amount of new first-mortgage bonds.* Considering the cash position of the debtor's estate at and prior to July, 1941, and that $11,000,000 of first-mortgage bonds then had to be provided to raise new money, it is evident that the extension of Choctaw & Memphis bonds was dictated by necessity and lack of alternative. It was this plan which came before the court for hearing in October, 1941, and upon which its opinion of June 3, 1943 was rendered. The further hearing held by the Commission on September 1, 1943 was limited by it to receipt of evidence in respect of the matters specified in the court's opinion and its order of June 25, 1943. The payment of the principal of the Choctaw & Memphis bonds was not among the matters so specified. It may be fairly said, therefore, that the Commission has not considered, nor been required to consider, payment of the bonds in lieu of extending them.

The extension of maturity of these bonds for 20 years was provided to meet the then existing necessities of the case; those necessities have disappeared. Furthermore, if the plan provision were approved, the Choctaw & Memphis Bonds would not be callable before January 1, 1969. Since the Commission originally approved the proposed extension of the bonds, the market for railroad bonds has so greatly improved that there can be no doubt that the Choctaw & Memphis Bonds, bearing interest at 4%, maturing January 1, 1969 and non-callable, would sell for far more than par, and at a higher price than 5% bonds maturing January 1, 1949. In other words, the Choctaw & Memphis bondholders would benefit to a greater degree under the plan than if their legal rights remained unaffected, and such benefit would be at the cost of the reorganized company.

After careful consideration, the court concludes that the proper solution is to leave the Choctaw & Memphis bonds undisturbed, not affected by the plan in any way. The holders cannot complain of this because they have no right to have their position improved by a plan of reorganization. A correction of the plan in this respect will not affect the public interest; the amount involved is so small that a

* By supplemental order dated January 3, 1944, the Commission modified the plan so as to provide for the payment of accrued and unpaid interest on these bonds in cash.

maturity on January 1, 1949 will present no serious problem and their payment at such maturity will effect a substantial saving to the reorganized company in interest which would otherwise have to be paid over the extension period. The court is of the opinion that its power to make this correction in the plan is conferred by Section XXII thereof, which provides:

"XXII. CONSTRUCTION OF PLAN.

"The construction of the plan by the court shall be final and conclusive. The court may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as may be necessary or expedient in order to carry out the plan effectively."

The foregoing conclusions make it unnecessary to consider the question as to the power of the court to order immediate payment of these bonds or to pass on the objections thereto made by the holders.

Miscellaneous.

The Commission has made certain changes and corrections in the plan on its own motion. No objection has been made to any of these. The court has examined them and finds that they are proper and should be approved.

By order entered November 8, 1944 on the petition of the Trustees, the court directed the Trustees to pay the claim of Reconstruction Finance Corporation with interest at the rate of 4%. Such payment will result in the return of the collateral held by the RFC and the withholding of the cash and securities allotted to it under the plan. At the hearing on said petition, it was contended by certain objectors that the payment might be urged as the basis for a redistribution of such cash and securities so allotted.

The court holds that, if the claim of the Reconstruction Finance Corporation is paid, or if any other claims or bonds are paid or purchased, there is to be no redistribution of securities, and any securities released from pledge or purchased or paid, and any new securities issued therefor under the plan, would be treasury securities. The court so construes the plan under Section XXII, which has already been quoted, and under Section XVII, "Payments on Claims before Plan Consummated", which provides that in the event any payment shall be made in respect of a claim prior to the consummation of the plan, securities otherwise

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distributable in respect of such claim shall be withheld and shall be treasury securities.

The court considers the payment of the claim of the Reconstruction Finance Corporation, or the payment or purchase of other claims or bonds, if any be ordered, to be consistent with the plan and to afford no basis for any redistribution of securities which would involve a modification of the plan. If any money used to pay or purchase a claim or bonds were not used in that way, it could be used, either before or after consummation of the plan, for additions and betterments or for the purchase of equipment, and it could be used after the consummation of the plan for the purchase of the securities allotted under the plan for the claims of bonds. It is no more inconsistent with the plan to pay claims or purchase securties before the consummation of the plan than it is to spend the same money for additions and betterments before or after the consummation of the plan, or to purchase securities after the plan is consummated.

Clearly the payment of a claim or the purchase of securities would not afford a basis for a redistribution of securities allotted under the plan. It would amount merely to appropriating surplus earned since the effective date of the plan to one of the several uses to which it could be applied. All those who have interests, as stockholders of the reorganized company in the earned surplus would benefit from such a use of the money consistently with the plan, just as they would if the money were spent for additions and betterments or used after the consummation of the plan to purchase securities. If there were a redistribution of the securities that would not be true.

The use of the money will not constitute a change in conditions calling for a modification of the plan. The money has accumulated, and there is no basis for saying that there is more in the estate than was expected when the Commission approved the plan. The use of the money to retire debt does not change the situation any more materially than would the use of it for additions and betterments or the accumulation of it for future use.

Conclusions.

With the corrections and clarifications hereinbefore set forth, the court concludes and finds that the provisions of the modified plan now before it comply with sub-section (b)

of the Bankruptcy Act, that the plan is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders; that the approximate amounts to be paid by the debtor, or by any corporation or corporations acquiring the assets of the several debtors herein, for expenses and fees incident to the reorganization, have been fully disclosed so far as they could be ascertained at the date of the hearing, are reasonable, are within such maximum limits as are fixed by the Commission and are, within such maximum limits, subject to the approval of the court, which approval has been given by various orders heretofore entered in these proceedings; that the plan provides for the payment of all costs of administration and all other allowances made or to be made by the court; and that all of the statutory prerequisites to the approval of the plan as certified to the court by the Interstate Commerce Commission have been met.

For the reasons heretofore given, all objections to said modified plan will be overruled, and the plan, as herein corrected and clarified, will be approved.

Counsel for the Trustees are requested to prepare an appropriate draft of decree in conformity with this opinion and to submit the same to the court upon not less than 10 days' notice to all parties entitled thereto.

MICHAEL L. IGOE,
Judge, United States District Court.

Filed May 14, 1945.

And afterwards on, to wit, the 29th day of May, A. D. 1945 came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Filed May 29, 1945

Petition of Trustees for Authority to Purchase Choctaw & Memphis Railroad Company First Mortgage Bonds.

Joseph B. Fleming and Aaron Colnon, Trustees of the estate of the principal debtor herein, respectfully show:

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By order entered September 27, 1944, petitioners were authorized to purchase any or all of Choctaw & Memphis Railway Company First Mortgage bonds at the most favorable prices at which the same might be obtained, but not exceeding $1,450 per $1,000 bond, said price to include brokers' fees and commissions. Petitioners have been unable to purchase any of said bonds under the authority granted. By reason of lapse of time, with resulting additional interest accruals, the general improvement in the bond market, and the Court's approval of the plan of reorganization, the market value of said bonds has increased. Petitioners believe that purchases of said bonds will be advantageous to the trust estate and to the reorganized company, provided they can be obtained at a price of not exceeding $1,600 per $1,000 bond on all bonds offered directly to petitioners by the bondholders themselves; said price to include fees and commissions as respects bonds offered for sale otherwise than directly by the bondholders themselves.

WHEREFORE, petitioners pray that the Court enter an order authorizing the purchase by them of said bonds in conformity with the foregoing.

Respectfully submitted,

JOSEPH B. FLEMING
AARON COLNON
Trustees of the estate of the principal debtor

STATE OF ILLINOIS }
COUNTY OF COOK } ss:

Joseph B. Fleming and Aaron Colnon, being duly sworn, depose and say that they are the Trustees whose names are subscribed to the foregoing petition; that they have read the said petition and know the contents thereof; that the same is true to the best of their knowledge and belief.

JOSEPH B. FLEMING
AARON COLNON

Subscribed and sworn to before me this 24th day of May, 1945.

W. J. GEDHL,
Notary Public.

And on the same day, to wit, the 29th day of May, A. D. 1945 came John C. Traphagen, et al., by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Filed May 29, 1945

Answer of Choctaw & Memphis Bondholders Committee to Petition of Joseph B. Fleming and Aaron Colnon, Trustees, for Authority to Purchase Choctaw & Memphis First Mortgage Bonds.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON and CHARLES G. WOODWARD as the Protective Committee for holders of Choctaw & Memphis Railroad Company First Mortgage Bonds (herein called the Committee) file this answer to the petition of Joseph B. Fleming and Aaron Colnon, Trustees, returnable before this Court on May 28, 1945, in which the Trustees seek authority to purchase Choctaw & Memphis Bonds at a price not exceeding $1,600 per $1,000 Bond.

The Committee opposes the petition of the Trustees for the following reasons:

1. The Committee is informed and believes and therefore alleges that the holders of the Choctaw & Memphis Bonds, throughout the pendency of the present cause, have been entitled to receive currently as it became due and payable the interest on their Bonds, and that said holders are presently entitled to have all overdue interest paid, together with interest on the matured and unpaid installments of interest. This Court in its opinion handed down May 14, 1945, has decided against the Committee with respect to the point regarding interest on matured and unpaid interest. It is the present intention of the Committee to appeal from the decree to be entered on such opinion.

The Committee believes that the failure of the Trustees to pay interest on the Choctaw & Memphis Bonds as it has accrued and the continuing failure to put said Bonds in a current position with respect to interest has depressed the market for said Bonds and has resulted in a lower market price therefor than would exist upon a recognition of the legal and equitable rights to which the holders of said Bonds are entitled. It is therefore believed that the proposal to offer to purchase Bonds at a time when the market has been thus depressed is unfair and inequitable to the bondholders and may be misleading to them, in that the impres-

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sion may be created that a fair and reasonable price is being offered for said Bonds whereas such price is actually below what the Committee believes to be the proper price in view of the legal and equitable rights of the bondholders.

In view of the adequacy of the cash position of the Trustees and in view of the recognition given to the position of the Choctaw & Memphis Bonds in the Court's opinion of May 14, 1945, the Committee expects to file promptly a petition for the payment of all installments of overdue interest on said Bonds, together with interest thereon.

WHEREFORE, the Committee respectfully requests that the petition of Joseph B. Fleming and Aaron Colnon as Trustees, for authority to purchase Choctaw & Memphis First Mortgage Bonds at a price not exceeding $1600 per $1000 Bond be denied, and that the Committee be accorded such other and further relief as may be just and proper in the premises.

Dated: New York, N. Y.,
May 23, 1945.

JOHN C. TRAPHAGEN
JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD
As a Protective Committee for the Holders of Choctaw & Memphis Railroad Company First Mortgage Bonds
By JOHN C. TRAPHAGEN,
Chairman.

CAHILL, GORDON, ZACHRY & REINDEL,
Counsel for said Committee,
No. 63 Wall Street,
New York 5, N. Y.
By DANIEL JAMES
a Partner

[Verification omitted in printing.]

And on the same day, to wit, the 29th day of May, A. D. 1945, being one of the days of the regular May term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable MICHAEL L. IGOE, District Judge, appears the following entry, to wit:

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Entered May 29, 1945

Order on Petition of Trustees for Authority to Purchasse Choctaw & Memphis Railroad Company First Mortgage Bonds.

This cause coming on to be heard this day upon the petition of the Trustees of the principal debtor for an order authorizing the purchase of any or all of the outstanding First Mortgage bonds of Choctaw & Memphis Railroad Company, whereby the Trustees may pay not exceeding $1,600 per $1,000 bond, and the court having heard statements of counsel for the Trustees and being fully advised in the premises, finds that purchases of said bonds at such price will be advantageous to the Trust Estate and to the reorganized company. It is, therefore,

ORDERED:

That petitioners are authorized to purchase said bonds at the most favorable prices at which the same can be obtained from time to time, but not exceeding $1,600 per $1,000 bond on all bonds offered directly to petitioners by the bondholders themselves; said price shall include fees and commissions as respects bonds offered for sale or otherwise than directly by the bondholders themselves.

Enter:

IGOE,

Judge.

And afterwards, to wit, on the 14th day of June, A. D. 1945, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Entered June 14, 1945

Findings, Conclusions and Order and Decree Relative to Interest on Unpaid Installments of Interest on Choctaw & Memphis Bonds.

The Court having under consideration that part of the supplemental report and order of the Interstate Commerce Commission (hereinafter called the "Commission") of May 1, 1944, duly certified to this Court by the Commission, which provides that "In the event the court orders the payment of interest upon the installments of interest

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accrued and unpaid, it shall be paid in cash", and said supplemental report and order having come on for hearing on June 23, 1944 pursuant to order of court entered May 10, 1944, due and legal notice having been given as required by said order, and the Court having heard arguments of counsel for the Protective Committee for Choctaw & Memphis Railroad Company First Mortgage Bonds that the holders of these bonds should receive in cash interest on matured and unpaid installments of interest, and the Court having considered the brief filed on behalf of said Protective Committee, and being fully advised in the premises, and having filed its opinion herein on May 14, 1945 wherein the request for payment of interest upon interest is denied, and proposed findings, conclusions and order and decree having been presented upon due notice to all parties entitled thereto, the Court hereby makes the following Findings and Conclusions:

FINDINGS.

1. The matured and unpaid interest on said Choctaw & Memphis Railroad Company first mortgage 5-percent gold bonds to the effective date of the plan, January 1, 1944, amounts to $1,762,000; that the plan provides that the holders of the bonds shall receive $1,762,000 cash therefor.

2. That neither the Choctaw & Memphis Railroad Company mortgage dated January 2, 1899, nor the bonds secured thereby, contain any covenant or other provision for the payment of interest on matured and unpaid installments of interest.

3. That there are no facts or circumstances presented by the record in these proceedings whereby holders of said bonds are equitably entitled to receive interest upon matured and unpaid installments of interest on said bonds.

CONCLUSIONS.

1. The Court has jurisdiction of the subject-matter, of the property upon which said first mortgage of said Choctaw & Memphis Railroad Company and the bonds secured thereby are a lien, and of the holders of the bonds issued and outstanding under said mortgage.

2. Said bondholders have no contract right to receive payment of interest on matured and unpaid installments of interest on said bonds, and have no claim in equity thereto by virtue of any facts or circumstances shown by the record in these proceedings.

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3. The claim of said bondholders for payment of interest on matured and unpaid installments of interest on said bonds should be denied.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

I.

All of the Findings and Conclusions hereinbefore set out shall be considered as incorporated in this order and decree.

II.

The claim for the allowance and payment of interest on matured and unpaid installments of interest on Choctaw & Memphis Railroad Company first mortgage bonds be, and the same is, hereby denied.

III.

The Clerk of this Court shall forthwith send certified copies of the Opinion of this Court filed herein on May 14, 1945, and of the foregoing Findings, Conclusions and this Order and Decree to the Commission.

MICHAEL L. IGOE,
Judge, United States District Court.

And afterwards on, to wit, the 13th day of July, A. D. 1945 came John C. Traphagen, *et al.* by their attorneys and filed in the Clerk's office of said Court a certain Notice of Appeal in words and figures following, to wit:

Affidavit attached.

Filed July 13, 1945

Notice of Appeal.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

IN THE MATTER *of* THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.	In Proceedings for the Reorganization of a Railroad. No. 53209.

NOTICE IS HEREBY GIVEN that John C. Traphagen, James E. Gowen, John [sic] H. Wilson and Charles G. Woodward,

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constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order and decree entered herein on June 14, 1945 (Order No. 276-D), denying the claim for the allowance and payment of interest on matured and unpaid instalments of interest on Choctaw and Memphis Railroad Company First Mortgage Bonds, and from every part of said order and decree. Dated, July 10, 1945.

CAHILL, GORDON, ZACHRY & REINDEL,
By DANIEL JAMES
A Partner.

Attorneys for John C. Traphagen and others as the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,
Office and Post Office Address:
63 Wall Street,
New York 5, N. Y.

CERTIFICATE OF MAILING.

I, ROY H. JOHNSON, Clerk of the United States District Court for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 16th day of July, 1945, in accordance with Rule 73 (b) of the Rules of Civil Procedure and General Orders in Bankruptcy for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

ıander & Green,
) Broadway,
w York, N. Y.

Shearman & Sterling,
55 Wall Street,
New York, N. Y.

ilkie, Owen, Otis, Farr & Gallagher,
Broad Street,
w York, N. Y.

Harry Kirshbaum,
67 West 44th Street,
New York, N. Y.

kman & Bogue,
Broad Street,
w York, N. Y.

W. F. Peter,
1025 La Salle Street Station,
Chicago, Illinois.

Root, Clark, Buckner & Ballantine,
31 Nassau Street,
New York, N. Y.

White & Case,
14 Wall Street,
New York, N. Y.

Rathbone, Perry, Kelley & Drye,
70 Broadway,
New York, N. Y.

Sullivan & Cromwell,
48 Wall Street,
New York, N. Y.

Cook, Lehman, Greenman, Goldmark & Loeb,
20 Pine Street,
New York, N. Y.

Milbank, Tweed & Hope,
15 Broad Street,
New York, N. Y.

Winston, Strawn & Shaw,
38 South Dearborn Street,
Chicago, Illinois.

Isham, Lincoln & Beale,
72 West Adams Street,
Chicago, Illinois.

Gann, Secord, Stead & McIntosh,
135 South La Salle Street,
Chicago, Illinois.

Mayer, Meyer, Austrian & Platt,
231 South La Salle Street,
Chicago, Illinois.

Mudge, Stern, Williams & Tucker,
c/o Mayer, Meyer, Austrian & Platt,
231 South La Salle Street,
Chicago, Illinois.

Michael Gesas,
100 West Monroe Street,
Chicago, Illinois.

H. J. Campbell,
33 North La Salle Street,
Chicago, Illinois.

Wilson & McIlvaine,
120 West Adams Street,
Chicago, Illinois.

Chas. O. Rundell,
135 South La Salle Street,
Chicago, Illinois.

John Gerdes,
1 Wall Street,
New York, N. Y.

Bowden, Taylor, Norville & Sprowl,
105 West Adams Street,
Chicago, Illinois.

Tenney, Sherman, Rogers & Guthrie,
120 South La Salle Street,
Chicago, Illinois.

Poppenhusen, Johnstone, Thompson & Raymond,
11 South La Salle Street,
Chicago, Illinois.

William J. Froelich,
231 South La Salle Street,
Chicago, Illinois.

Louis Cohen,
120 South La Salle Street,
Chicago, Illinois.

Defrees, Fiske, O'Brien & Thompson,
105 South La Salle Street,
Chicago, Illinois.

Gilruth & Beck,
29 South La Salle Street,
Chicago, Illinois.

William C. Boyden, Jr.,
135 South La Salle Street,
Chicago, Illinois.

ROY H. JOHNSON,
Clerk.

(SEAL)

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Statement of Points.

And on the same day, to wit, the 6th day of August, A. D. 1945 came the Appellants by their attorneys and filed in the Clerk's office of said Court a certain Statement of Points in words and figures following, to wit:

Statement of Points.

Filed August 1945

Come now John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, and file this their Statement of Points on which they intend to rely on their appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order and decree entered herein on June 14, 1945 (Order No. 276-D), denying the claim for the allowance and payment of interest on matured and unpaid installments of interest on Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, and from every part of said order and decree:

(1) The Court erred in said order in holding that the holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, are not entitled to interest on overdue installments of interest.

(2) The Court erred in holding that the usual federal law regarding interest payments to holders of overdue interest coupons is not applicable in proceedings under Section 77 of the Bankruptcy Act.

(3) The Court erred in said order in finding that no facts or circumstances are shown by the record in these proceedings whereby holders of said bonds are equitably entitled to receive interest upon matured and unpaid installments of interest thereon.

(4) The record on which said order was made does not support said order.

(5) The Court erred in not holding that under the applicable federal law, interest is payable on the interest installments which have matured during the reorganization period and have not been paid.

(6) The Court erred in not holding that the holders of

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said bonds are equitably entitled to receive said installments of interest on interest.

Dated: August 2, 1945.

CAHILL, GORDON, ZACHRY & REINDEL,
By DANIEL JAMES
A Partner.

Attorneys for John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward as the Protectitve Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,

Office and Post Office Address:
63 Wall Street,
New York 5, N. Y.

And on the same day, to wit, the 6th day of August, A. D. 1945 came the Appellants by their attorneys and filed in the Clerk's office of said Court a certain Designation of Record in words and figures following, to wit:

Filed August 6, 1945

Designation of Contents of Record on Appeal from Order Entered Herein on June 14, 1945 (Order No. 276-D) Denying the Claim for the Allowance and Payment of Interest on Matured and Unpaid Installments of Interest on Choctaw & Memphis Bonds.

Now come John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, and designate the following portions of the record, proceedings, and evidence in the above captioned cause to be contained in the record on their appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order and decree entered herein on June 14, 1945 (Order No. 276-D), denying the claim for the allowance and payment of interest on matured and unpaid installments of interest on Choctaw

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and Memphis Railroad Company First Mortgage 5% Gold Bonds, and from every part of said order and decree:

1. Petition for Order No. 4, filed June 26, 1933, entitled "Petition of Debtor Respecting Certain Maturing Obligations" (R., Vol. 1, pp. 19-26).

2. Order No. 4, entered June 26, 1933, entitled "Order Respecting Certain Maturing Obligations" (R., Vol. 1, pp. 28-29).

3. Order No. 38, entered December 28, 1933, entitled "Order Permitting Intervention of Bondholders' Committees" (R., Vol. 1, pp. 375-377).

4. Petition for Order No. 43, filed January 30, 1934, entitled "Petition of the Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952 and of Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds Due January 1, 1949 for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due November 1, 1933 on the Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and the Interest Due January 1, 1934 on the Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds Due January 1, 1949" (R., Vol. 1, pp. 422-432).

5. Petition for Order No. 43, filed January 16, 1935, entitled "Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due January 1, 1934, July 1, 1934, and January 1, 1935 on Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949" (R., Vol. 2, pp. 695-701).

6. Order No. 43, entered January 29, 1935, authorizing the payment of interest due January 1, 1934, together with interest on interest thereon (R., Vol. 2, pp. 712-714).

7. Order No. 45-A, entered May 2, 1934, entitled "Sequestration Order" (R., Vol. 1, pp. 567-570).

8. Order No. 45-B, entered November 9, 1934, entitled "Order Respecting Segregation of Earnings" (R., Vol. 2, pp. 667-668).

9. Answer to Petition for Order No. 54, filed June 22, 1934, entitled "Answer of John C. Traphagen, James E. Gowen, Geo. H. Wilson and Charles G. Woodward, as a

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Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds to Petition of Trustees Respecting Interest Due January 1, 1934, on General Mortgage 4% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company" (R., Vol. 1, pp. 591-596).

10. Order No. 54, entered June 26, 1934, entitled "Order Respecting Payment of Interest Due January 1, 1934, on General Mortgage 4% Gold Bonds of The Chicago, Rock Island and Pacific Railway Company" (R., Vol. 1, pp. 597-599).

11. Petition for Order No. 45-B, filed November 2, 1934, entitled "Petition of Trustees Respecting Formula for Segregation of Earnings" (R., Vol. 2, pp. 663-665).

12. Petition for Order No. 43-A, filed July 25, 1935, entitled "Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortage 5% Gold Bonds, Due May 1, 1952, and Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due July 1, 1934, January 1, 1935 and July 1, 1935, on Said Choctaw & Memphis Bonds" (R., Vol. 2, pp. 865-872).

13. Answer of Trustees to Petition for Order to Pay Interest, filed September 17, 1935, entitled "Answer of Trustees to Petition of Protective Committee for Choctaw, Oklahoma and Gulf Bonds for an Order Directing Payment of Interest on Choctaw & Memphis First Mortgage 5% Gold Bonds" (R., Vol. 2, pp. 897-898).

14. Order No. 43-A, entered September 17, 1935, entitled "Order Respecting Payment of Interest on Choctaw & Memphis Railroad Company First Mortgage 5% Bonds, Due January 1, 1949" (R., Vol. 2, pp. 907-908).

15. Answer of Trustees to Petition for Order No. 106, filed June 14, 1937, entitled "Answer of Trustees to Petition for Order for Allocation of Earnings and Expenses" (R., Vol. 3, pp. 1549-1551).

16. Order No. 106-A, entered June 17, 1937, entitled "Order for Allocation of Earnings and Expenses" (R., Vol. 3, pp. 1587-1617).

17. Petition for Order No. 106-B, filed April 7, 1938, entitled "Petition of Trustees for an Order Respecting

Amended Modified Formula for Segregation of Revenues and Expenses" (R., Vol. 4, pp. 2199-2227).

18. Order No. 106-B, entered April 7, 1938, entitled "Order for the Application of an Amended Modified Formula for the Allocation of Earnings and Expenses to Operations for 1937" (R., Vol. 4, pp. 2233-2235).

19. "Master's Report on Objections to Proposed Report on Formula" filed April 11, 1938 (R., Vol. 5, pp. 2437-2441).

20. Order No. 106-F, entered October 14, 1938, entitled "Order on Various Petitions, Etc., Relating to Formula Matters" (R., Vol. 5, pp. 2587-2589).

21. Petition dated November 13, 1939, entitled "Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, for an Order Directing the Trustees of the Debtors Herein to Pay the Interest Due July 1, 1934, January 1, 1935, July 1, 1935, January 1, 1936, July 1, 1936, January 1, 1937, July 1, 1937, January 1, 1938, July 1, 1938, January 1, 1939, July 1, 1939 and January 1, 1940 on Said Choctaw and Memphis Bonds."

22. Answer verified December 4, 1939, entitled "Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Estates of the Principal and Subsidiary Debtors Herein, to the Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds for an Order Directing Payment of Interest Due July 1, 1934, and Thereafter to January 1, 1940, on Said Choctaw and Memphis Bonds."

23. Answer dated April 8, 1940, entitled "Answer of Frank O. Lowden, James E. Gorman and Joseph B. Fleming, Trustees of the Estates of the Principal and Subsidiary Debtors Herein, to the Petition of the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds for an Order Directing Payment of Interest Due July 1, 1934, and Thereafter to January 1, 1940, on Said Choctaw and Memphis Bonds."

24. Answer dated April 26, 1940, entitled "Answer of Protective Committee (Herein Called Choctaw Committee) for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, Due May 1, 1952, and Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949, to Petitions of The Marine Midland Trust Company of New York, as Trustee of the Carrollton Branch First Mortgage of The Chicago, Rock Island and Gulf Railway Company, for the Payment of Interest on Carrollton Branch Mortgage Bonds."

25. Memorandum Opinion of Judge Wilkerson, verified July 2, 1940, denying petition of Choctaw Committee for payment of interest but without prejudice to renewal of application in 120 days.

26. Petition dated October 30, 1940, entitled "Petition of Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds for an Order Setting a Further Hearing on the Petition of Said Committee for Payment of Interest on Said Choctaw and Memphis Bonds."

27. Order dated November 4, 1940, entitled "Order Setting a Further Hearing on the Petition of the Choctaw Committee for Payment of Interest on Choctaw and Memphis Bonds."

28. Minute Order of Judge Igoe entered on Petition of Choctaw Committee dated October 30, 1940, for payment of interest on Choctaw and Memphis Bonds.

29. Interstate Commerce Commission, Finance Docket No. 10028, entitled "Supplemental Report of the Commission," decided July 31, 1941 (R., Vol. 6, pp. 3345-3472).

30. Interstate Commerce Commission, Finance Docket No. 10028, entitled "Report of the Commission on Further Consideration," and Amendatory Order, decided October 2, 1941 (R., Vol. 6, pp. 3472-1 to 3472-32).

31. Interstate Commerce Commission, Finance Docket No. 10028, entitled "Supplemental Report of the Commission," decided April 6, 1942 (R., Vol. 6, pp. 3472-33 to 3472-39).

32. "Exceptions by the Choctaw Committee to Plan of Reorganization Certified by the Interstate Commerce Commission and Enlargement and Amendment of Petition by Choctaw Committee for Payment of C&M Interest and

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Notes Therefor and of Hearing Thereon and Notice of Hearing on Petition by Choctaw Committee for Reconsideration and Modification of Order of July 16, 1938 Respecting Formula Provisions" dated September 29, 1941.

33. Order No. 214-B, entered April 17, 1942, entitled "Order Fixing Time for Filing Briefs on Objections to Plan of Reorganization" (R., Vol. 6, pp. 3649-3650).

34. "Position of the Committee Representing Bonds of the Choctaw & Memphis Railway Company and the Choctaw, Oklahoma & Gulf Railway Company Respecting the Application of the Group of Institutions Acting to Protect Their Interests as Holders of First and Refunding Mortgage 4% Bonds and Secured 4½% Bonds, Series A, of The Chicago, Rock Island and Pacific Railway Company for Amendment of Reorganization Plan" dated July 23, 1943.

35. Interstate Commerce Commission, Finance Docket No. 10028, entitled "Supplemental Report of the Commission," dated May 1, 1944, Document No. 287-A (R., pp. 4545-4614).

36. Statement dated June 13, 1944, entitled "Statement of Claim of the Choctaw Committee for Equitable Treatment Under Plan of Reorganization Approved by the Supplemental Report and Order Dated May 1, 1944, of the Interstate Commerce Commission."

37. "Suggestions by Aaron Colnon, Trustee, With Respect to First Mortgage Bonds of Choctaw & Memphis Railroad Company," Document No. 316, filed June 23, 1944 (R., pp. 4647-4650).

38. Petition for Order No. 327, filed September 27, 1944, entitled "Petition of Trustees for Authority to Purchase Choctaw & Memphis Railroad Company First Mortgage Bonds" (R., pp. 4741-4742).

39. Order No. 327, entered September 27, 1944, entitled "Order on Petition of Trustees for Authority to Purchase Choctaw & Memphis Railroad Company First Mortgage Bonds" (R., pp. 4743-4744).

40. Petition for Order No. 328, filed October 31, 1944, entitled "Petition of Trustees Respecting Payment of Reconstruction Finance Corporation Loan" (R., pp. 4749-4756).

41. Order No. 328, entered November 8, 1944, entitled "Order Respecting Payment of the Claim of Reconstruction Finance Corporation" (R., pp. 4771-4773).

42. "Petition of Trustees for Authority to Purchase Choctaw & Memphis Railroad Company First Mortgage Bonds" May, 1945.

43. "Answer of Choctaw & Memphis Bondholders' Committee to Petition of Joseph B. Fleming and Aaron Colnon, Trustees, for Authority to Purchase Choctaw & Memphis First Mortgage Bonds," dated May 23, 1945.

44. Order entitled "Order on Petition of Trustees for Authority to Purchase Choctaw & Memphis Railroad Company First Mortgage Bonds."

45. Opinion of Court, filed May 14, 1945, approving plan of reorganization for the debtors.

46. Opinion of Court, filed May 14, 1945, entitled "Opinion of Court Relative to Interest on Unpaid Installments of Interest on Choctaw & Memphis Bonds."

47. Order No. 276-D, entered June 14, 1945, entitled "Findings, Conclusions and Order and Decree Relative to Interest on Unpaid Installments of Interest on Choctaw & Memphis Bonds" (R., pp. 4977-4979).

48. Statement of Mr. Marcus Bell on behalf of the Trustees, contained in the transcript of the hearing held in these proceedings on October 31, 1944, on petition for Order No. 328, entitled "Petition of Trustees for Leave to Pay the Reconstruction Finance Corporation Loan" (Transcript, p. 3, line 1, through p. 10, line 15), and exhibits introduced at said hearing in behalf of Trustees, numbered respectively Trustees' Exhibits 1 and 2.

49. Exhibits received in evidence at hearing held on September 21, 1937, before Hon. Jacob I. Grossman, Special Master, as follows:

Choctaw & Memphis Railroad Company's First Mortgage to the Girard Life Insurance, Annuity & Trust Company of Philadelphia, Trustee, dated January 2, 1899, marked Petitioner's Exhibit 1-b;

Choctaw, Oklahoma & Gulf Railroad Company's Lease to the Principal Debtor, dated March 24, 1904, marked Petitioner's Exhibit 1-f;

Deed from Choctaw & Memphis Railroad Company to Choctaw, Oklahoma & Gulf Railroad Company in 1900, marked Petitioner's Exhibit 1-r.

50. Report of the Trustees of the Debtor to Judge Igoe, dated April 25, 1944.

Designation of Contents of Record on Appeal, etc.

51. Notice of Appeal, dated July 10, 1945, by John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, from the Order and Decree entered herein on June 14, 1945 (Order No. 276-D), entitled "Findings, Conclusions and Order and Decree Relative to Interest on Unpaid Installments of Interest on Choctaw & Memphis Bonds."

52. This designation of the record, proceedings, and evidence to be contained in the record on said appeal.

53. Statement of Points on said appeal, filed herein.

54. Affidavit as to service of this designation and said Statement of Points on appeal.

Dated: August 2, 1945.

Respectfully submitted,
CAHILL, GORDON, ZACHRY & REINDEL,
By DANIEL JAMES,
A Partner.

Attorneys for John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward as the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,
Office and Post Office Address:
63 Wall Street,
New York 5, N. Y.

[Affidavit of Service of the foregoing Statement of Points and Designation of Contents of Record on Appeal omitted in printing.]

Order Extending Time to File Transcript of Record.

Order.

And afterwards, to wit, on the 21st day of August, A. D. 1945, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Entered August 21, 1945

Order Extending Time to File Transcript of Record.

Upon the annexed affidavit of Arthur L. Petersen, sworn to the 17th day of August, 1945, upon the notice of appeal dated July 10, 1945, heretofore had herein, it is

ORDERED that the time for the appellant, Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, to file its record on appeal from this Court's Order No. 276-D and to docket the action in the United States Circuit Court of Appeals for the Seventh Circuit be and the same hereby is extended for a period of 30 days, to and including September 21, 1945.

IGOE,
U. S. D. J.

Dated August 21, 1945.

And afterwards, to wit, on the 20th day of September, A. D. 1945, being one of the days of the regular September term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Order.

Entered September 20, 1945

Upon the annexed affidavit of ARTHUR L. PETERSEN, sworn to the 15th day of September, 1945, and the exhibits attached thereto, and upon all the proceedings heretofore had herein; it is

ORDERED, that the document dated September 29, 1941, entitled:

"EXCEPTIONS BY THE CHOCTAW COMMITTEE TO PLAN OF REORGANIZATION CERTIFIED BY THE INTERSTATE COMMERCE COMMISSION;

AND

ENLARGEMENT AND AMENDMENT OF PETITION BY CHOCTAW COMMITTEE FOR PAYMENT OF C&M INTEREST AND NOTICE THEREOF AND OF HEARING THEREON:

AND

NOTICE OF HEARING ON PETITION BY CHOCTAW COMMITTEE FOR RECONSIDERATION AND MODIFICATION OF ORDER OF JULY 16, 1938 RESPECTING FORMULA PROVISIONS."

and the affidavit of service thereof dated September 30, 1941, both attached hereto as Exhibit A, be and the same hereby are deemed to have been filed and are hereby accepted for filing in the above entitled proceedings, *nunc pro tunc* as of the date thereof.

IGOE,
U. S. D. J.

Dated: September 20, 1945.

Clerk's Certificate.

NORTHERN DISTRICT OF ILLINOIS, } ss.:
EASTERN DIVISION, }

I, ROY H. JOHNSON, Clerk of the District Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record made in accordance with the Designation filed in this Court in the cause entitled Chicago, Rock Island and Pacific Railway Company, Debtor No. 53209 as the same appear from the original records and files thereof now remaining in my custody and control.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at my office, in the City of Chicago, in said District, this 18th day of September, A. D. 1945.

ROY H. JOHNSON,
Clerk.

(SEAL.)

Placita.

Placita

PLEAS had at a regular term of the District Court of the United States for the Eastern Division of the Northern District of Illinois begun and held in the United States Court Rooms in the City of Chicago in the Division and District aforesaid on the first Monday of July (it being the 2nd day thereof) In the Year of Our Lord One Thousand Nine Hundred and Forty-Five and of the Independence of the United States of America the 169th Year.

Present:

Honorable	JOHN P. BARNES,	District	Judge
"	PHILIP L. SULLIVAN,	"	"
"	MICHAEL L. IGOE,	"	"
"	WILLIAM J. CAMPBELL	"	"
"	WALTER J. LA BUY,	"	"
"	ELWYN R. SHAW,	"	"
"	WILLIAM H. HOLLY,	"	"

ROY H. JOHNSON,
Clerk.

WILLIAM H. MCDONNELL,
Marshal.

Tuesday, August 21, A. D. 1945.

Court met pursuant to adjournment.

Present: Honorable MICHAEL L. IGOE,
Trial Judge.

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On the 15th day of June, A. D. 1945, being one of the days of the regular June term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable Michael L. Igoe, District Judge, appears the following entry, to wit:

Findings, Conclusions and Order and Decree Approving Plan of Reorganization for the Debtors.

These proceedings came on for hearing on the 23rd day of June, 1944, pursuant to an order of this Court made May 10, 1944, due and legal notice having been duly given as required by said order, on the Plan of Reorganization for the Debtors, as modified and approved by the Interstate Commerce Commission, hereinafter called the "Commission," in its Supplemental Report and Order of May 1, 1944, duly certified to this Court by the Commission together with the transcript of proceedings before the Commission, and on all objections to said Plan and all claims for equitable treatment filed herein, such objections and claims having been filed by various parties in interest. At said hearing, all of those supporting the Plan, all of those objecting thereto and all of those claiming equitable treatment were given an opportunity to be heard and to introduce evidence. The Court, having heard the testimony given at said hearing and having considered all of the evidence, including the exhibits, and having considered the transcript of proceedings certified to the Court by the Commission, the arguments of counsel and the entire record in these proceedings, and being fully advised in the premises, and having filed its opinion herein on May 14, 1945, and proposed findings, conclusions and order and decree having been presented after due notice to all parties entitled thereto, hereby makes the following findings and conclusions:

FINDINGS.

1. The Chicago, Rock Island and Pacific Railway Company, principal debtor in this proceeding, a railroad corporation organized under the laws of the States of Illinois and Iowa, had its principal executive and operating office in Chicago, Illinois, within the territorial jurisdiction of this Court, for a period of more than six months immediately prior to June 7, 1933, on which date it filed its peti-

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tion in this Court, stating that it was unable to meet its debts as they matured and that it desired to effect a plan of reorganization under Section 77 of the Act of July 1, 1898, entitled, "An Act to Establish a Uniform System of Bankruptcy Throughout the United States", as amended, (hereinafter called "Section 77"). A copy of said petition was filed at the same time with the Commission.

2. The Court, on said date, approved the petition as properly filed and authorized the debtor to continue in possession and control of its properties and assets. Thereafter, certain railroad corporations, subsidiaries of the principal debtor which owned all of the capital stock of each, filed similar petitions in the same proceedings, namely, St. Paul and Kansas City Short Line Railroad Company and Rock Island, Arkansas and Louisiana Railroad Company on August 28, 1933; The Chicago, Rock Island and Gulf Railway Company, Choctaw, Oklahoma and Gulf Railroad Company, Rock Island, Stuttgart and Southern Railway Company, Rock Island, Omaha Terminal Railway Company, Rock Island Memphis Terminal Railway Company and Peoria Terminal Company on October 24, 1933. Each of said petitions stated that the respective petitioners desired to effect a plan of reorganization in connection with the plan of reorganization of the principal debtors; said petitions were approved by the Court as properly filed. The principal debtor was directed to continue in possession of and to operate the properties of said Debtors, except The Chicago, Rock Island and Gulf Railway Company and Peoria Terminal Company, each of which was directed to continue in possession of and to operate its properties. On November 22, 1933, Frank O. Lowden, James E. Gorman and Joseph B. Fleming were appointed Trustees of the Estates of the several debtors, effective December 1, 1933; said appointment was made permanent by order entered December 28, 1933. After the death of James E. Gorman, the surviving Trustees were continued in office; after the death of Frank O. Lowden, Aaron Colnon was appointed substitute Trustee by order of court entered April 19, 1943. The Trustees first appointed took possession of the property and assets of the several debtors on December 1, 1933, and since that time they, or their respective successors in office, have continued in possession and control of the same and the operation thereof.

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3. Plans of reorganization were presented to the Court and to the Commission by the principal debtor on July 15, 1936, and by the Protective Committee for the principal debtor's First and Refunding Mortgage Bonds and Secured Series A Bonds on or about July 20, 1938. After due notice, hearings on said plans were held by the Commission beginning October 6, 1936, and thereafter on various dates. The hearings were finally closed on July 27, 1938, and thereafter briefs were filed by various parties and interveners. In September, 1939, the Commission's Examiner issued a proposed report as to a plan of reorganization for the several debtors, to which exceptions were filed by various parties and interveners, together with briefs in support thereof and replies thereto. Oral arguments were had before the Commission on December 7 and 8, 1939. The Commission issued its report and order on October 31, 1940, approving a plan of reorganization for the debtors, to which various petitions for modification were filed, and on July 31, 1941, the Commission issued its supplemental report and order wherein it modified the plan in certain respects. To eliminate certain errors and inconsistencies in the approved plan, the Commission issued a further supplemental report and order on October 2, 1941; a further supplemental report was issued by the Commission on April 6, 1942. All of said reports and orders, together with the transcripts of proceeding, were duly certified to this Court by the Commission. Pursuant to order and upon due and legal notice, hearings were had upon said plan of reorganization, as modified, and were concluded on October 17, 1941. The Court, on June 3, 1943, filed its opinion herein approving said plan except as to two matters, and thereafter, on June 25, 1943, the Court entered an order referring the proceeding back to the Commission for further action in accordance with the applicable provisions of Section 77 of the Bankruptcy Act and said opinion; and, in addition, for the Commission's determination in the first instance of certain matters recited in said order. Upon such reference back to the Commission, the Commission held further hearings on September 1, 1943, and thereafter made its supplemental report and order dated January 3, 1944, approving a further modified plan of reorganization containing modifications in accordance with said opinion of the Court and the order referring the proceedings back to the Commis-

sion. Petitions for further modification of said plan were filed by various parties in interest, and the Commission, having considered the same, made and certified to this Court its supplemental report and order dated May 1, 1944, approving a plan of reorganization, as further modified, for said debtors, and the plan so approved is the plan which came on before this Court on June 23, 1944, pursuant to order and notice as hereinabove recited.

4. The plan of reorganization for The Chicago, Rock Island and Pacific Railway Company, debtor, and for the several subsidiary debtors in this proceeding, approved by the Commission in its supplemental report and order of May 1, 1944 and certified to and filed with this Court (hereinafter called the "plan of reorganization" or the "plan"):

(a) includes provisions for modifying or altering the rights of creditors and stockholders of the debtors, respectively,

(b) provides for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an amount that, after due consideration of the probable prospective earnings of the property in the light of its earnings experience and all other relevant facts, there will be adequate coverage of such fixed charges by the probable earnings available for the payment thereof, and

(c) provides adequate means for the execution of the plan, and

(d) complies in all respects with all of the provisions and requirements of subsection (b) of Section 77.

Said plan of reorganization

(a) is fair and equitable,

(b) affords due recognition to the rights of each class of creditors and stockholders,

(c) does not discriminate unfairly in favor of any class of creditors or stockholders,

(d) will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders, and

(e) provides for the payment of all costs of administration and all other allowances made, or to be made, by the Court or the Judge.

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5. The approximate amounts to be paid by the debtors, or by any corporation or corporations acquiring the debtors' assets, for expenses and fees incident to the reorganization, have been fully disclosed, so far as they could be ascertained at the date of the hearing, are reasonable and are within such maximum limits as were fixed by the Commission and were within such maximum limits subject to the approval of the Judge. Such additional amounts as may be required to be paid out of the debtors' estates, or by any corporation or corporations acquiring the debtors' assets, for services performed and expenses and fees incurred since February 1, 1941, incident to the reorganization and plan, when ascertained, will be subject to the approval of this Court within maximum limits hereafter to be fixed by the Commission.

6. Said plan of reorganization approved by the Commission provides for the payment of all claims of the United States for taxes and the United States is not a creditor on any claims for customs duties.

7. The Court finds that the equity of the holders of the principal debtor's preferred stock and common stock is of no value and the holders of such stock are not entitled to participate in the plan.

8. Under the terms of the plan, it is provided "That the construction of the plan by the Court shall be final and conclusive. The Court may correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as may be necessary or expedient in order to carry out the plan effectively". The Court finds that the following correction should be made for the reasons stated in the opinion of the Court filed herein on May 14, 1945.

The following paragraph contained in the supplemental order of the Commission dated May 1, 1944 which reads:

> "The Choctaw & Memphis Railroad Company first mortgage, dated January 2, 1899, will be assumed by the reorganized company, and the $3,524,000 of 5-percent bonds issued thereunder and outstanding in the hands of the public shall remain outstanding as an obligation of the reorganized company after such bonds have been presented for stamping with a legend showing that the maturity date thereof has been extended to January 1, 1969, and that the bond

interest rate thereon has been reduced to 4 percent per annum with respect to the installments of interest falling due subsequent to January 1, 1944, and in the case of bonds in coupon form for the attachment of additional coupons for interest during the extension period. For the $1,762,000 of unpaid accrued interest the holders of the bonds shall receive cash, as hereinafter stated."

should be corrected by substituting the following therefor:

"The Choctaw & Memphis Railroad Company first mortgage dated January 2, 1899, and the $3,524,000 of 5-percent bonds issued thereunder and outstanding in the hands of the public shall remain undisturbed and unaffected by the plan, with preservation of lien and rights of bondholders as set forth in said mortgage and said bonds. For the $1,762,000 of unpaid accrued interest to January 1, 1944, the holders of the bonds shall receive cash, as hereinafter stated."

All provisions of the plan inconsistent with the foregoing correction should be corrected to conform therewith.

9. By order of court entered herein on January 23, 1934, the various creditors and stockholders of the several debtors herein were divided into classes according to the nature of their respective claims and interests; said order provided for 26 Classes, numbered 1 to 26, inclusive. Said order fixed the time within which claims falling within Classes 1, 2, 3 and 26 might be filed and the manner of filing, and due notice thereof was given to creditors, stockholders and claimants in accordance with said order. The time for filing such claims has long since expired; various claims have been presented and allowed.

By supplemental order entered June 26, 1944, the Court expunged Class 21 and created a new class known as No. 21-A; said order also fixed the time and manner for filing claims and interests of or on behalf of creditors described in Classes 4, 5, 13, 14, 15, 16, 17, 18, 19, 20, 21A and 22; due notice thereof was given in accordance with said order. Various claims of the classes described in said order were thereafter duly filed.

10. With the correction set forth in paragraph 8 above, all findings, statements and recitals of fact made by the

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Commission in its original report of October 31, 1940, as modified by its several supplemental reports hereinbefore mentioned, are supported and confirmed by the evidence and are adopted as Findings of Fact by the Court.

11. During the pendency of this proceeding, all claims of creditors in Classes 6, 7, 8, 9, 10, 11 and 12 have been fully satisfied and no longer exist.

12. The only creditors in Class 22 have been the bank creditors and the Reconstruction Finance Corporation. All of the bank creditors have sold or otherwise disposed of their collateral under orders of the Court to which they respectively agreed and by which they are barred from making any claims against the principal debtor for any deficiency resulting from the sale or other disposition of said collateral. The claim of the Reconstruction Finance Corporation has been paid pursuant to an order of the Court entered on November 8, 1944. There are therefore no longer any creditors in Class 22.

13. Purchasers from the bank creditors of First and Refunding 4% Gold Bonds, Rock Island, Arkansas and Louisiana First Mortgage 4½% Gold Bonds and St. Paul and Kansas City Short Line First Mortgage 4½% Gold Bonds shall be entitled to vote in Classes 5, 18 and 19, respectively.

14. No cash, property or securities shall be distributed to the Reconstruction Finance Corporation under the plan. All securities released from pledge to the Reconstruction Finance Corporation and any new securities otherwise distributable to the Reconstruction Finance Corporation shall be treasury securities. If any other claims or bonds are paid, in whole or part, or purchased prior to the consummation of the plan, any securities released from pledge or purchased or paid, and any new securities withheld which would be otherwise distributable in respect of any such claim or bond so paid or purchased, shall be treasury securities.

There shall be no redistribution of any such claims or securities so released, purchased, paid or withheld.

15. Pursuant to order of Court entered May 10, 1944 fixing the time within which objections to plan of reorganization of May 1, 1944 might be filed herein, notice of which order was duly given as therein provided, objections were duly filed by or on behalf of the following: the principal debtor; the committee representing the principal

debtor's preferred stockholders; Sarah K. Baker, a preferred stockholder; L. C. Fritch, a stockholder; a group of convertible bondholders; St. Louis Union Trust Company, Trustee of Little Rock and Hot Springs Western Railroad Company first mortgage bonds, and the Committee for the Protection of the Holders of said bonds.

CONCLUSIONS.

1. This Court has jurisdiction of the subject matter of these proceedings and of the debtors and their properties, creditors and stockholders, respectively, and all others having claims against or interests in the debtors or their properties.

2. The plan complies in all respects with the provisions and requirements of subsection (b) of Section 77, is fair and equitable, affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders and will conform to the requirements of the law of the land regarding the participation of the various classes of creditors and stockholders, and, with the correction approved under Finding 8, is approved.

3. The interests of the holders of the Choctaw & Memphis Railroad Company First Mortgage Bonds will not be affected by the plan, as corrected. If the Commission finds that the interests of such class of creditors will not be adversely and materially affected by the plan, submission to such class shall not be necessary.

4. The Finding of the Commission that the equity of the Preferred and Common Stockholders of the principal debtor has no value is affirmed.

5. All objections to the plan are overruled. It is, therefore,

ORDERED, ADJUDGED AND DECREED, that

I.

All of the Findings and Conclusions hereinbefore set out shall be considered as incorporated in this Order and Decree.

II.

The plan will be and hereby is corrected in respect of the matter, and in the manner, set forth under the foregoing Finding 8. The making of said correction at this time is without prejudice to the power of the Court to cure any defect, supply any omission, or reconcile any incon-

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sistency that may hereafter appear in the plan in connection with the carrying out of reorganization, the Court reserving power to act in that behalf in such manner and to such extent as may be necessary or expedient to carry out the plan effectively.

III.

The plan, with the correction set forth in the preceding paragraph II and the reservations contained in said paragraph, is hereby approved.

IV.

The objections to the plan are, and each of them is, hereby overruled.

V.

The Finding of the Commission that the equity of the Preferred and Common Stockholders of the principal debtor (Classes 23, 24 and 25) have no value is affirmed.

VI.

The Findings of the Commission under paragraph XIII "CLAIMS NOT AFFECTED BY THE PLAN", and under paragraph III "UNDISTRIBUTED OBLIGATIONS", in its supplementary order of May 1, 1944, setting forth the claims which, to the extent allowed, will not be adversely and materially affected by the plan, are affirmed.

VII.

Any securities released from pledge in consequence of claims or bonds heretofore paid or purchased, or which may hereafter be released, paid or purchased prior to the consummation of the plan, and any new securities withheld which would be otherwise distributable in respect of any such claim or bond so paid or purchased, shall be treasury securities.

There shall be no redistribution of any such claims, bonds or other securities so released, purchased, paid or withheld.

VIII.

The Clerk of this Court shall forthwith send certified copies of the Opinion of this Court filed herein on May 14, 1945, and of the foregoing Findings, Conclusions and this Order and Decree to the Commission.

MICHAEL L. IGOE,
Judge, United States District Court.

Petition of Choctaw Bondholders' Committee, etc.

BE IT REMEMBERED, that the following petition was fi
in the District Court of the United States for the Northe
District of Illinois, Eastern Division, on this the 17th d
of August, A. D. 1945.

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

IN THE MATTER *of* THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.	In Proceedings for t Reorganization of Railroad. No. 53209.

Filed August 17, 1945

**Petition of Choctaw Bondholders' Committee for
Order Directing the Payment of Interest D
July 1, 1934, and Subsequently on Choctaw
Memphis Bonds.**

*To the Honorable the Judges of the District Court of t
United States for the Northern District of Illino
Eastern Division:*

John C. Traphagen, James E. Gowen, George H. Wils
and Charles G. Woodward as a Protective Committee f
Choctaw, Oklahoma and Gulf Railroad Company Conso
dated Mortgage 5% Gold Bonds, due May 1, 1952, a
Choctaw and Memphis Railroad Company First Mortga
5% Gold Bonds, due January 1, 1949, upon information a
belief except as to the statements set forth below in pa
graph 1 hereof, allege that:

1. On October 30, 1933, at the instance and request
the holders of large amounts of Choctaw and Memphis Ra
road Company First Mortgage 5% Gold Bonds, due Jan
ary 1, 1949 (herein referred to as C&M Bonds), as well
of Choctaw, Oklahoma and Gulf Railroad Company Co
solidated Mortgage 5% Gold Bonds, due May 1, 19
(herein referred to as CO&G Bonds), your petitioners we
organized as a Protective Committee for the holders
C&M Bonds and CO&G Bonds outstanding in the hands

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the public. Your petitioners are now acting as such Committee under a Deposit Agreement dated November 2, 1934, as amended on December 5, 1934. On December 28, 1933, by order of this Court (Order No. 38, R., Vol. 1, pp. 375-377), your petitioners were allowed to intervene generally as parties to the above entitled proceedings. As of the close of business on July 7, 1945, there were on deposit with the depositary for your petitioners an aggregate of $1,875,000 principal amount of the C&M Bonds, constituting 53.2% of such bonds issued and outstanding.

2. Under date of January 2, 1899, Choctaw and Memphis Railroad Company (herein referred to as C&M) duly executed and delivered to Girard Life Insurance, Annuity and Trust Company of Philadelphia, as Trustee, an Indenture (herein referred to as the C&M Indenture), authorizing the issuance thereunder of an aggregate of $3,750,000 principal amount of the C&M Bonds. Girard Trust Company is the Successor Trustee under the C&M Indenture.

3. Thereafter in accordance with provisions of the C&M Indenture, there were duly executed, authenticated, issued and sold by C&M $3,524,000 principal amount of the C&M Bonds, all of which were outstanding in the hands of the public at the commencement of the instant proceeding and all of which are still outstanding in the hands of the public, except as there may have been acquisitions of such bonds by the Trustees of the Debtor herein, as to which acquisitions your petitioners have no information or knowledge.

4. The C&M Bonds above referred to are secured by, among other things, a first lien on 280.49 miles of railroad extending from a point on the west bank of the Mississippi River, opposite Memphis, Tennessee, to the Arkansas-Oklahoma line, on certain property in Memphis, Tennessee, and on appurtenances to said line of railroad. In addition to said physical properties covered by the lien of the C&M Indenture, said Indenture provides in the granting clause that there are mortgaged thereunder "all the rents, issues, tolls, and other income of said mortgaged railroad hereinbefore described * * *."

5. In Article Sixth of the C&M Indenture the mortgagor convenanted, promised and agreed as follows:

> "That it shall and will well and truly pay, or cause to be paid, to the holders of the bonds to be issued hereunder, and everyone of them, the principal and interest to grow due thereon respectively

at the times, at the rate, and in the manner mentione therein, and the coupons thereto belonging, accord ing to the true intent and meaning thereof, * * *."

The C&M Indenture further provides that in the event o certain defaults specified in Article Seventh, including a de fault in the payment of interest on the C&M Bonds, which de fault shall continue for a period of three months, the Truste of the C&M Indenture shall have the power to take posses sion of the mortgaged property and, among other things, "t collect and receive all tolls, freights, incomes, rents, issue and profits of the same, and every part thereof * * *. Said Article Seventh further provides that the Trustee o the C&M Indenture may either before or after enterin upon the railroad apply to a court for the appointment o a receiver to exercise such powers under the mortgage, an the railroad company in said article assented to the appoin ment of such receiver.

6. The C&M Indenture provides in paragraph Fou teenth that the mortgagor shall maintain offices or agencie in Philadelphia and New York for the payment of interes upon the C&M Bonds. In the bonds the mortgagor promise to pay the principal amount on January 1, 1949, at the offi of the Trustee of the C&M Indenture in Philadelphia, Pen sylvania, and

"* * * to pay interest thereon at the rate of fiv per cent. per annum from July 1st, 1899, payabl semi-annually in the cities of New York or Phi adelphia, in like gold coin, on the first days of Jan ary and July in each year, but only upon the presenta tion and surrender of the annexed coupons as the severally mature."

The coupons attached to the C&M Bonds are in beare form and provide:

"On , the Choctaw an Memphis Railroad Company will pay to bearer, a its office in the city of Philadelphia, or at its agenc in the city of New York, twenty-five dollars in gol being six months' interest on its first mortgage bon No. ."

7. After the issuance and sale of the C&M Bonds a stated above in paragraph 3, C&M sold all its propert subject to the lien of the C&M Indenture, to Choctaw, Okl

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homa and Gulf Railroad Company (herein referred to as the Debtor CO&G), in consideration of, among other things, the agreement and undertaking by the Debtor CO&G to pay all the C&M Bonds theretofore issued and those that might thereafter be issued under the C&M Indenture.

8. Subsequent to the sale of its property as aforesaid by C&M to the Debtor CO&G, the Articles of Association of C&M were allowed to lapse.

9. Under date of March 24, 1904, the Debtor CO&G and The Chicago, Rock Island and Pacific Railway Company (herein called the Debtor Pacific Company) entered into a lease under the terms of which the Debtor CO&G leased to the Debtor Pacific Company, for the term of 999 years, the lines of railroad and properties of the Debtor CO&G, including the lines of railroad and properties upon which the C&M Indenture constituted and now constitutes a first lien. As a part of the rental to be paid by the Debtor Pacific Company under said lease, and as part consideration therefor, the Debtor Pacific Company covenanted and agreed in Article Third of said lease to pay by way of rental:

> "(c) all rentals or other compensations due or owing by the lessor under or by virtue of the provisions of any lease, trackage arrangement or operating contract under and by virtue of which the lessor has the right to use the railway, or any part thereof, of any other railway company;
>
> "(d) an amount equal to the interest accruing on * * * the said $3,525,000 five per cent. bonds of Choctaw and Memphis Railroad Company, * * *; such payments to be made by payment of said interest as it accrues to the holders of said bonds in accordance with the terms thereof and of the mortgages or deeds of trust securing the same."

(The difference between the $3,524,000 of C&M Bonds referred to in paragraph 3 hereof and the figure stated in the foregoing quotation is accounted for by one $1000 bond which has been held in the treasury of the Debtor Pacific Company since prior to the commencement of the instant proceedings.)

10. Under date of June 7, 1933, the Debtor Pacific Company filed its petition herein praying that an order be entered approving the petition as properly filed under Section

77 of the National Bankruptcy Act (U. S. C., Title 11, Section 205), and such an order was entered on the same date (Petition and Order No. 1, R., Vol. 1, pp. 1-12). On November 22, 1933, an order was entered pursuant to which Frank O. Lowden, James E. Gorman and Joseph B. Fleming were temporarily appointed as Trustees of the Debtors in this proceeding, including the Debtor Pacific Company and the Debtor CO&G (Order No. 21, R., Vol. 1, pp. 291-294), and on December 28, 1933, said appointment was made permanent (Order No. 32, R., Vol. 1, pp. 335-337). On March 25, 1942, said James E. Gorman died, and said Frank O. Lowden and Joseph B. Fleming were continued as Trustees, with all the powers, rights, privileges, duties and obligations theretofore vested in all three Trustees (R., Vol. 6, pp. 3611-3614). On March 20, 1943, said Frank O. Lowden died, and said Joseph B. Fleming was continued as sole Trustee (R., Vol. 7, pp. 3971-3975), until the appointment of Aaron Colnon as co-Trustee on April 19, 1943 (Order No. 228-B, R., Vol. 7, pp. 3995-3997). Said Joseph B. Fleming and Aaron Colnon continue to serve as Trustees herein. References to the Trustees in this petition, unless the context otherwise indicates, mean said Trustees as they have been from time to time constituted.

11. Said Trustees have from time to time collected the earnings, rents, issues and profits of all the lines of railroad and property constituting the railway system of the Debtor Pacific Company, including the earnings, rents, issues and profits of the lines of railway and other property upon which the C&M Indenture constitutes a first lien, and have carried all such earnings, rents, issues and profits in an account or accounts in the names of the Trustees as Trustees of the Debtor Pacific Company.

12. On May 2, 1934, this Court entered its Order No. 45-A (R., Vol. 1, pp. 567-570), known as its Sequestration Order, in which it was ordered and determined, among other things, that the Trustees of the Debtors should keep records and accounts showing separately the tolls, earnings, incomes, rents, issues and profits during the period of the reorganization proceeding by mortgage divisions, and that such records and accounts should be kept in accordance with a formula for allocation reflecting the respective interests of the various mortgages, such formula to become effective upon approval by the Court. Said Sequestration Order fur-

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ther provided in paragraph 2 thereof, so far as said paragraph is applicable for the purposes of this petition:

> "That no Trustee of a mortgage shall be required to make any further demand or application for the enforcement in this proceeding of any lien or right in respect of any of the tolls, earnings, incomes, rents, issues and profits of the property covered by the mortgage (including the tolls, earnings, incomes, rents, issues and profits of any mortgage bonds covered by the lien of the mortgage); but the rights of each Mortgage Trustee shall be determined as if due demand or application had been made by such Trustee (and by the Trustee of any mortgage bonds covered by the lien of the mortgage) at the earliest date or dates when any such Trustee would have been entitled to make such demand or application under the terms of the mortgage of which it is Trustee; * * *."

Said Sequestration Order then went on to provide in paragraph 3, as follows:

> "That the respective Trustees of the mortgages shall be entitled to apply at the conclusion of this proceeding, or at such earlier time or times as they may respectively deem proper, upon due notice to all parties of record, for the enforcement of their liens upon, or rights in, the tolls, earnings, incomes, rents, issues and profits in which they may have any interest, and of their liens upon, or rights in, any of the proceeds thereof, and for an equitable adjustment, as between those interested in this proceeding, with respect to any use which may have been made of any of the same; but nothing in this order shall be construed as determining the merits of any such application or as requiring the Trustees to pay over or earmark any of the same pending the further order of the Court."

13. Pursuant to the instructions in said Sequestration Order, certain studies were made and conferences were held among the various interested parties, and as a result there was prepared a formula, known as the Second Revised Formula dated August 16, 1934. Said Second Revised Formula was submitted to the Court by the Trustees of the Debtor with a petition filed November 2, 1934 (R., Vol. 2, pp. 663-665). The petition stated that the Trustees had com-

pleted the segregation of earnings according to the formula for each of the twelve months from June, 1933, to May, 1934, inclusive, and prayed that the Trustees be permitted to discontinue such segregation of earnings because of the labor and expense involved. On November 9, 1934, this Court, by its Order No. 45-B (*id.*, pp. 667-668), ordered the filing of the Second Revised Formula, authorized the discontinuance of the segregation of earnings in accordance with said formula, and fixed a date for the filing of objections to the formula.

14. The applications of said Second Revised Formula made by the Trustees for the twelve months from June, 1933, to May, 1934, inclusive, showed that the earnings available for interest on the C&M Bonds, after providing for all taxes and other prior charges, amounted to $389,884. The interest requirements on the C&M Bonds equal $176,200 per year. Although said formula has never been approved by the Court or accepted by the parties, it constituted the only indication of earnings available for interest on the C&M Bonds up to the end of 1934.

15. On June 17, 1937, this Court entered its Order No. 106-A (R., Vol. 3, pp. 1587-1590) approving a "Formula for Segregating Revenues and Expenses of the Different Mortgage Divisions of the Rock Island Lines," dated June 4, 1937 (*id.*, pp. 1591-1617). Said order further provided, among other things, that the Trustees of the Debtor Pacific Company should apply the formula for each six-months' period beginning January 1, 1936, and ending December 31, 1937. Subsequently and on April 7, 1938, the Trustees filed a petition (R., Vol. 4, pp. 2199-2204) praying that they be permitted to apply an Amended Modified Formula (*id.*, pp. 2205-2231) to the operations of the Rock Island Lines for each of the two six-months' periods in the calendar year 1937. On the same date, this Court entered its Order No. 106-B (*id.*, pp. 2233-2235) among other things directing such application of the Amended Modified Formula. Said formulas approved by Orders Nos. 106-A and 106-B, with slight modifications not here material, became the principal basis adopted by the Interstate Commerce Commission for allocations to security holders under the plan.

16. In the Supplemental Report dated July 31, 1941, of the Interstate Commerce Commission in the cause bearing Finance Docket No. 10028 (R., Vol. 6, pp. 3345-3472), the finding is made that (*id.*, p. 3381):

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> "The Choctaw & Memphis is a leased line, and the record establishes the fact that its earnings are substantially in excess of its bond interest requirements."

The results of the applications of said formulas referred to in paragraph 15 are shown by the Commission to indicate that in 1936 the adjusted income available for interest on the C&M Bonds was $450,882 and in 1937 $471,459, as contrasted with annual interest requirements on the C&M Bonds of $176,200. (Schedule A to Supplemental Report dated April 6, 1942, of the Interstate Commerce Commission in the proceeding referred to above, *id.*, p. 3472-33 *et seq.*).

17. On June 26, 1933, shortly after the commencement of the instant reorganization proceeding, the Debtor Pacific Company filed a petition in this Court (R., Vol. 1, pp. 19-26) praying for authority to pay certain obligations, including the obligation to pay the semi-annual instalment of interest which matured July 1, 1933, on the C&M Bonds. The allegations of said petition regarding said C&M Bonds are as follows:

> "These bonds are a first lien on 280 miles of railway in Arkansas and on certain terminals in Memphis, Tennessee, at the rate of $12,585 per mile of road. The mileage involved is very important to the Debtor's system, being its main line west, from Memphis, Tennessee, through Arkansas, and forming part of the Debtor's main line to Tucumcari, New Mexico."

On the date of the filing of said petition, this Court entered its Order No. 4 (*id.*, pp. 28, 29), authorizing the Debtor Pacific Company to pay, among other things, said instalment of interest on the C&M Bonds, and said instalment was paid.

18. By Order No. 43 of this Court (R., Vol. 2, pp. 712-714), made and entered on January 29, 1935, the Trustees were authorized and directed to pay, and did pay, on February 5, 1935, the interest due January 1, 1934, on the C&M Bonds, together with interest on said interest to the date of payment. This order was a partial grant of the relief prayed for in a petition of the Choctaw Committee (*id.*, pp. 695-701) praying for payment of the interest in-

stalments which matured January 1 and July 1, 1934, and January 1, 1935.

19. On July 25, 1935, your petitioners filed herein their verified petition praying that the semi-annual instalments of interest falling due on July 1, 1934, January 1, 1935, and July 1, 1935, with interest on said instalments, be paid (*id.*, pp. 865-872). The Trustees of the Debtors filed an answer on September 17, 1935, setting forth as the reason for the non-payment of such interest only the cash requirements of the estate of the Debtor Pacific Company as a whole and not purporting to deal with the earnings of the lines and properties upon which the C&M Bonds had a valid and perfected first lien and out of which the holders of such bonds had a prior right to receive payment of the interest due them. The substance of such answer is contained in paragraph 3, which reads as follows (*id.*, pp. 897, 898):

> "Trustees state that during the current year the trust estate has not earned its actual operating expenses, the deficit for the first seven months of the year being $1,291,867, as compared with the income above operating expenses for the corresponding period of 1934 of $853,641. The operating revenues for the first seven months of 1935 were $37,356,387 as compared with $38,530,219 for the first seven months of 1934.
>
> "In view of the fact that the trust estate is not earning its operating expenses and the deficit for the first seven months of 1935 is the amount stated, the Trustees are without funds with which to pay the interest now due on the said Choctaw and Memphis Bonds.
>
> "The Trustees therefore are not willing to recommend to the Court the payment of the interest prayed for."

On the same date, September 17, 1935, this Court entered its Order No. 43-A (*id.*, pp. 907, 908) denying the prayer of said petition for an order directing the payment of interest,

> "but saving to the holders of said bonds, for future consideration in connection with the plan or plans for reorganization or otherwise, any rights which they may assert by reason of their claims that mort-

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gage interest has been earned on that part of the system property that is subject to the lien of the Choctaw and Memphis 5% First Mortgage."

20. In November, 1939, your petitioners filed in the above entitled proceedings their further verified petition dated November 13, 1939, praying that there be paid the twelve semi-annual instalments of interest which matured on the C&M Bonds July 1, 1934, to January 1, 1940, inclusive, together with interest on interest. The answer of the Trustees to this petition stated in substance, among other things, that such payment could not be made without depleting working capital necessary for the operation of the entire Rock Island System. Subsequently, with improvement in the cash position of the Trustees, they withdrew said answer and substituted a new one dated April 8, 1940, which showed that their cash position was at least $1,000,000 in excess of their own estimate of minimum System working capital requirements. On July 2, 1940, this Court handed down a memorandum opinion which denied the petition, "but without prejudice to renewal of the application to pay such interest on or after one hundred twenty (120) days from July 1, 1940."

21. After the lapse of said time, your petitioners filed a renewal of their application for interest by petition verified October 30, 1940. At a hearing held thereon on January 15, 1941, it was suggested by the Court that the request by your petitioners for a determination be postponed until after a plan of reorganization had been certified to the Court by the Interstate Commerce Commission. Your petitioners assented and the Court made a minute order on said petition, the entry reading as follows:

> "All petitions for payment of interest on the Choctaw or Carrollton Branches of the debtor herein continued generally. Petitioners may bring same up for hearing upon the giving of five (5) days notice to the parties in interest."

Thereafter on September 29, 1941, the original petition of November 14, 1939, was amended to include the interest instalments through January 1, 1942, but due to activities in connection with the plan of reorganization the petition as so amended was never brought on for further formal hearing before the Court.

22. Except as stated above in paragraphs 17 and 18, no interest has been paid on the C&M Bonds since the inception of the instant reorganization proceedings.

23. The cash position of the Debtor Pacific Company is now such that the interest, together with interest on overdue instalments of interest, prayed for in this petition could readily be paid without in any manner endangering the operations of the Debtor estate or the consummation of the plan of reorganization approved by this Court in its Order No. 276-C entered June 15, 1945 (R., p. 4965).

24. The interest moneys which have been withheld from payment to the holders of the C&M Bonds as hereinbefore stated have been included among funds which constituted profits available for the payment of interest on said bonds, earned by the properties which are subject to the lien of the C&M Indenture. Under the provisions of said Indenture and of said Sequestration Order referred to in paragraph 12, the holders of the C&M Bonds have a valid and effective first lien upon said earnings and profits, which has been duly perfected or must be deemed to have been duly perfected pursuant to said Sequestration Order, and the holders of said bonds are and have been throughout the period of the instant reorganization proceedings entitled to have said earnings and profits paid to them to the extent necessary to satisfy the interest instalments on the C&M Bonds as such instalments became due and payable.

25. The failure to pay interest from time to time as it matured on the C&M Bonds has deprived the holders of said bonds of funds to which they became duly entitled on the respective interest payment dates and to which they have continued to be entitled, has depressed the market value of the C&M Bonds below what it would have been if the interest had been paid currently as the holders of the C&M Bonds were entitled to have it paid, and has resulted in detriment, injury and harm to said holders.

26. The withholding of said funds from payment to the C&M bondholders by way of interest instalments has been of benefit, advantage and profit to the other interests in the Rock Island Estate, consisting of creditors and security holders who, with respect to such funds so withheld, were in positions junior in all respects to that of the holders of the C&M Bonds, and who were entitled to no part of said income and profits until after the full satisfaction of the interest requirements currently maturing on the C&M

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Bonds. The withholding of such funds from the C&M bondholders for the benefit, advantage and profit of said junior creditors and security holders has been in substance and effect a borrowing of funds over a period of more than ten years from the C&M bondholders, for the use of which funds the persons benefitted by such borrowings, comprised of the other parties to this proceeding, are liable for interest both in equity and in law.

27. On June 14, 1945, there was entered herein the order and decree of this Court (Order No. 276-D, R., p. 4977), denying the claim made by your petitioners on behalf of the holders of the C&M Bonds that interest on overdue instalments of interest should be paid in connection with the plan of reorganization. At or about the time of the filing herein of this petition, your petitioners are likewise filing a notice of appeal in connection with their appeal to the Circuit Court of Appeals for the Seventh Circuit from said order.

28. The prayer of the present petition is in substance that the holders of the C&M Bonds be put in a current position by having paid to them all instalments of interest which have matured and remain unpaid, together with interest on said instalments. Your petitioners do not intend to reargue before this Court the question of interest on overdue instalments of interest unless the Court should suggest such reargument; and it is assumed, therefore, that the Court will deny the prayer herein for interest on overdue instalments of interest. If the Court should, however, allow the present payment of overdue coupons on the C&M Bonds but at the same time deny the claim for interest on overdue instalments of interest, your petitioner respectfully request that, in any order entered in pursuance of such decision, provision be made that the acceptance by C&M bondholders of the face amount of their overdue coupons shall be without prejudice to their right to receive interest on overdue coupons to the date of payment thereof, in the event that an appeal from this Court's order denying interest on overdue interest should be successful.

WHEREFORE, your petitioners pray for an order herein—

(a) authorizing and directing the Trustees of the Debtor Pacific Company to pay promptly the semi-annual interest instalments which matured on the C&M Bonds on July 1, 1934, and thereafter to and

including July 1, 1945, together with interest on said instalments from the respective maturity dates thereof to the date of payment, at the rate of 6% per annum;

(b) authorizing and directing said Trustee thereafter to pay interest instalments on said C&M Bonds as such instalments mature; and

(c) granting to your petitioners such other and further relief as in the premises may seem just and proper.

Dated: July 11, 1945.

JOHN C. TRAPHAGEN,
JAMES E. GOWEN,
GEORGE H. WILSON and
CHARLES G. WOODWARD,
as a Protective Committee for the Holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,

By JOHN C. TRAPHAGEN,
Chairman.

CAHILL, GORDON, ZACHRY & REINDEL,
Attorneys for Petitioners,
By DANIEL JAMES,
A Partner.
63 Wall Street,
New York 5, N. Y.

[Verification omitted in printing.]

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And afterwards on, to wit, the 9th day of August, A. D. 1945, came Joseph B. Fleming & Aaron Colnon, Trustees, by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Answer of Joseph B. Fleming and Aaron Colnon, Trustees, to Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest Due July 1, 1934 and Subsequently on Choctaw & Memphis Bonds.

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Joseph B. Fleming and Aaron Colnon, Trustees herein, for answer to the petition of the Choctaw Bondholders' Committee, state:

1. They admit the allegations of paragraph 1 of the petition except that they have no knowledge as to the amount of Choctaw & Memphis bonds on deposit with petitioners.

2. Admit the allegations of paragraphs 2 to 23, both inclusive, of the petition.

3. Deny that the holders of Choctaw & Memphis bonds are and have been throughout the period of reorganization proceedings herein entitled to have earnings and profits from the properties subject to the lien of the indenture securing said bonds paid to them to the extent necessary to satisfy the interest installments on said bonds as such installments become due and payable.

4. Deny that the non-payment of interest from time to time on said bonds has depressed the present market value of said bonds below what it would have been if the interest had been paid currently and deny that such non-payment has resulted in detriment, injury and harm to said holders.

5. Deny that the non-payment of interest to Choctaw & Memphis bondholders by way of interest installments has been in effect a borrowing of funds from the C&M bondholders for any period and deny that other interests in the estates of the several debtors herein are liable for interest on such funds alleged to have been withheld, either in equity or in law.

6. Admit the allegations of paragraph 27.

Further answering, the Trustees allege: the plan of reorganization herein, as corrected and approved by the order

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of court entered herein on June 15, 1945, provides that said $3,524,000 face amount of Choctaw & Memphis 5% Bonds shall remain undisturbed and unaffected by the plan, with preservation of lien and rights of bondholders as set forth in said bonds and the mortgage securing the same, and that for the $1,762,000 of accrued and unpaid interest to January 1, 1944, the effective date of the plan, the holders of said bonds shall receive cash. Said $1,762,000 is a part of the total cash to be distributed under the plan, said total amount now being $34,279,750. Payment of said $1,762,000 arrears of interest on said bonds to January 1, 1944, in accordance with the prayer of said petition, would constitute preferential treatment to Choctaw & Memphis bondholders. There are no special equities in favor of Choctaw & Memphis bondholders justifying such preferential treatment as respects time of payment; and unless and until the court shall order payment of the entire $34,279,750 to all classes of creditors entitled thereto as provided in the plan, the prayer of said petition should be denied.

The Trustees refer to the order of court entered herein on May 29, 1945, known as Order No. 327-A, authorizing the Trustees of the principal debtor to purchase any or all of the outstanding Choctaw & Memphis bonds at prices not exceeding $1,600 per $1,000 bond. Said $1,600 is equivalent to full principal plus all accrued and unpaid interest at the rate of 5% per annum on said bonds to January 1, 1946. Said order is in full force and effect and the Trustees are ready and willing to buy any and all of said bonds which may be offered to them, paying cash therefor as authorized by said order.

WHEREFORE, the Trustees pray that the petition be denied.

JOSEPH B. FLEMING,
AARON COLNON,
Trustees of the Estate of The Chicago, Rock Island and Pacific Railway Company.

Otis F. Glenn,
139 West Van Buren Street,
Chicago, Illinois,
Wab. 3200.

[Verification omitted in printing.]

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And afterwards on, to wit, the 10th day of August, A. D. 1945 came the First & Refunding Group by their attorneys and filed in the Clerk's office of said Court a certain Answer in words and figures following, to wit:

Answer of First and Refunding Group

Filed August 10, 1945

to

Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest Due July 1, 1934, and Subsequently on Choctaw & Memphis Bonds.

To the Honorable the Judges of the District Court of the United States for the Northern District of Illinois, Eastern Division:

The First and Refunding Group, answering the petition of the Choctaw Bondholders' Committee, respectfully shows:

First—In paragraphs "4", "5" and "6" of the petition the Choctaw Bondholders' Committee quotes certain portions of the Indenture securing the Choctaw & Memphis Bonds. In addition, the following portion of paragraph Ninth of said Indenture directly bears on, and is inconsistent with, the claim of the Choctaw Bondholders' Committee to interest on unpaid interest:

> "And the said Trustee shall apply the proceeds or avails of any sale to be made under the provisions of this instrument, and the purchase money paid thereon, after deducting therefrom just allowances for all expenses connected therewith, including attorney and counsel fees, as well as any and all advances, expenses, and liabilities which may have been made or incurred by said Trustee in using, operating, maintaining, and preserving said railroad property and premises, or in carrying on and managing the business for the period the same may have been in the said Trustee's possession, or in arranging for making and completing the sale and payments for taxes, assessments, or other charges or liens prior to the lien of these presents, if any such there shall then be, and the said railway property and premises, or

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any part thereof, shall not have been sold subject thereto, as well as just and reasonable compensation for the said Trustee's own services, to the payment of the principal of such of said bonds as may be at that time outstanding, and of the interest which shall have accrued upon the said principal up to that time, according to the tenor thereof, without discrimination or preference as between principal and interest, but ratably to the aggregate amount of such principal and accrued interest; it being understood and hereby declared and agreed that such payment shall be made to the persons holding the bonds and coupons evidencing the right to such principal and interest, without discrimination or preference between them, *and if, after payment in full of all the said bonds, principal and interest, a surplus of the said proceeds of sale shall remain, the said Trustee shall pay over such surplus to the said company, its successors or assigns,* or as any court of competent jurisdiction shall lawfully direct." (Italics ours.)

Second—With respect to the allegations contained in paragraphs "24", "25" and "26" of the petition of the Choctaw Bondholders' Committee, the First and Refunding Group alleges that earnings and profits of properties securing other mortgage indentures of the Rock Island System have been withheld from the holders of bonds secured by such mortgages and that the claims of such bondholders to such earnings and profits are of equal standing with the claims of the Choctaw & Memphis bondholders to the earnings and profits of their security; and the First and Refunding Group denies the allegations of said petition which are inconsistent with the foregoing. The First and Refunding Group further asserts that the holders of Choctaw & Memphis Bonds are not entitled to payment on account of past due interest prior to payment on account of past due interest to other bondholders of the Rock Island System, and that the holders of Choctaw & Memphis bonds should accordingly be paid past due interest only when the Court directs cash payment to the other classes of bondholders, the amounts of such payments to be in accordance with the cash distribution provided for in the Plan of Reorganization of the Rock Island System certified by the Interstate Commerce Commission and approved by this Court.

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Third—With respect to paragraph "28" of the petition, the First and Refunding Group denies that the holders of the Choctaw & Memphis Bonds are entitled to interest on unpaid interest.

WHEREFORE, the First and Refunding Group respectfully prays that the petition of the Choctaw Bondholders' Committee be in all respects denied except that the First and Refunding Group does not object to the entry of an order by the District Court directing the present payment to all creditors entitled thereto of the amounts of cash which would be payable pursuant to the Plan of Reorganization certified by the Interstate Commerce Commission and approved by this Court.

GROUP OF INSTITUTIONS ACTING TO PROTECT THEIR INTERESTS AS HOLDERS OF FIRST AND REFUNDING MORTGAGE 4% BONDS AND SECURED 4½% BONDS, SERIES A, OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY,

By JOSEPH SCHREIBER,
Secretary.

WILKIE BUSHBY
ROOT, CLARK, BUCKNER & BALLANTINE,
31 Nassau Street,
New York, N. Y.,
WILLIAM C. BOYDEN, JR.,
135 South La Salle Street,
Chicago, Illinois,
Attorneys for First and Refunding Group.

[Verification omitted in printing.]

Affidavit With Exhibits A and B Attached.

And on the same day, to wit, the 17th day of August A. D. 1945 came the Choctaw Bondholders' Committee by its attorneys and filed in the Clerk's office of said Court a certain Affidavit with Exhibits A and B attached in words and figures following, to wit:

Filed ust 17, 945.

Affidavit With Exhibits A and B Attached.

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss.:

EDITH BROWN, being duly sworn, deposes and says:

1. I am employed by Riter & Co. as a statistician and am familiar with the matters hereinbelow set forth.

2. I was requested to prepare a tabulation of non-callable railroad bonds with a maturity approximating that of the Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, and which bonds have maintained a current interest position. In this tabulation, I was requested to set forth their market value (as determined by bids and offers, or actual sales) and their maturity yield for the purpose of ascertaining what the current market value of the Choctaw & Memphis bonds would be, assuming they too had maintained a current interest position.

3. In accordance with this request, I prepared the tabulation entitled "Comparison of Market Values and Yields of Near-term Railroad Maturities" annexed hereto as Exhibit A. This tabulation comprises various railroad bonds having a maturity date approximating that of the Choctaw & Memphis bonds which I selected from Moody's 1944 Manual of Steam Railroads. I secured and listed prices of these bonds from the available quotation services and then ascertained the maturity yield from bond value tables.

4. The entry in red represents the Choctaw & Memphis bonds. Based upon the assumption that their standing and credit had not been impaired by reason of the receivership of The Chicago, Rock Island & Pacific Railway Company and subsequent default of interest on the Choctaw & Memphis bonds, I ascertained the comparative maturity yield at which the Choctaw & Memphis bonds would be entitled to sell by striking an average of the yields of the bond issues being used as comparisons and then applying this average yield to the Choctaw & Memphis bonds by

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means of the bond value tables to determine their estimated current market.

5. Every effort was made to include in this tabulation bonds of reasonable comparability. Accordingly, the years 1925-1929, inclusive were selected as being a normal period and yields based upon the annual market ranges of the bonds used as comparisons were computed and averaged. For comparative purposes therefore, these averages have been set-out in Exhibit B together with yields on the annual range of Choctaw & Memphis bonds.

6. Although the Choctaw & Memphis bonds are presently quoted at $158.50 Bid—$160.00 Asked, per $100.00 par value, it must be noted that this quotation takes into consideration the unpaid accumulated interest of some eleven years amounting to approximately $57.50. Deducting these accumulations of $57.50 from the market values ascertained as above, it is evident that the actual market value of the Choctaw & Memphis bonds is as follows:

Per $100 par value @ $160	$160.00
Less Accumulated Unpaid Interest	57.50
Remainder	$102.50

This represents a price which is $9.00 to $9.50 per $100 par value less than the probable quoted value would have been had interest installments been paid at maturity.

EDITH M. BROWN.

Sworn to before me this 14th day of August, 1945.

MARGARET L. FLYNN

My Commission Expires June 22, 1946.

(Seal)

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Affidavit With Exhibits A and B Attached.

COMPARISON OF MARKET VALUES AND YIELDS OF NEAR-TERM RAILROAD MATURITIES

Issue	Maturity	Amount Outstanding	Market	Price 7/17/43	Yield	Moody Rating
Catawissa Railroad 1st Consolidated 4's	4-1-48	$ 2,215,000	Adams & Peck	105½-106½	1.92-B	A
Pennsylvania Railroad Consolidated Sterling 4's	5-1-48	39,759,320	N. Y. S. Ex.	108	1.04	AA
Pittsburgh, Youngstown & Ashtabula Rwy. 1st "A" 4's	6-1-48	3,556,000	Adams & Peck	106-B	1.85	A
United New Jersey R. R. & Canal Co. General (now 1st) 4's	9-1-48	841,000	Riter & Co.	108-B	1.37	AAA
Columbus & Hocking Valley R. R. 1st 4's	10-1-48	1,401,000	N. Y. S. Ex.	107⅝-B	1.50	AA
Cleveland & Pittsburgh R. R. General Sinking Fund "C" 3½s	11-1-48	2,197,000	Adams & Peck	106-B	1.60	AA
Choctaw, Memphis R. R. 1st 5's	1-1-49	3,525,000	Estimated	111.42	1.63*	B
Long Island Railroad Refunding 4's	3-1-49	38,366,000	N. Y. S. Ex.	107⅝	1.88	BAA
Central Pacific Rwy. 1st Refunding 4's	8-1-49	57,741,000-E	N. Y. S. Ex.	108	1.91	BAA
Wheeling & Lake Erie R. R. 1st Consolidated 4's	9-1-49	6,870,000	N. Y. S. Ex.	110⅛-B	1.46	AA
Elmira & Williamsport R. R. 1st Extended 4's	1-1-50	963,000	Riter & Co.	109½-B	1.79	AA
					16.32	
					1.63*	

B Bid Price.
E Estimated currently outstanding giving effect to exchange offer to Bondholders.
* Average yield 10 Bonds excluding Choctaw and Memphis.

SOURCES: Moody's 1944 Steam Railroads—Five Year Chronological Record of Bonds, Equipments and Notes, Special Feature Section.

Quotation Services Noted.

Bond Value Tables.

Exhibit A.

Affidavit With Exhibits A and B Attached.

ANNUAL MARKET RANGES AND YIELDS—1925-1929, INCLUSIVE

	1925		1926		1927		1928		1929	
Catawissa Railroad Co. 1st 4's due 1948	87 - 90½	4.95- 4.68	89 S	4.82- 4.82	93 - 93¼	4.52- 4.50	91 -100	4.70- 4.00	83 - 93	5.45- 4.55
Pennsylvania R. R. Co. Consolidated Sterling 4's due 1948	90¾- 95	4.66- 4.35	91½- 95⅞	4.62- 4.29	94⅝- 99¼	4.40- 4.05	92⅛-100	4.61- 4.00	89⅝- 93¾	4.84- 4.49
Pittsburgh, Youngstown & Ashtabula Rwy. Co. 1st Genl. "A" 4's due 1948	87 - 91⅜	4.95- 4.61	91 - 93	4.66- 4.50	92¾- 97	4.54- 4.22	93¾- 97¼	4.48- 4.20	90 - 93½	4.81- 4.51
United New Jersey R. R. & Canal Co. Genl. (now 1st) 4's due 1948	*		*		*		*		*	
Columbus & Hocking Valley R. R. 1st 4's due 1948	86⅛- 87	5.02- 4.95	87⅛- 92½	4.97- 4.54	91⅞- 97⅛	4.61- 4.21	91⅜- 96⅞	4.67- 4.23	83⅞- 91	5.36- 4.72
Cleveland & Pittsburgh R. R. Genl. Sinking Fund "C" 3½s due 1948	85½- 86⅛	4.52- 4.47	83½- 86½	4.71- 4.47	88½- 90¼	4.34- 4.20	90¼- 91	4.23- 4.17	85⅛- 90½	4.70- 4.23
Choctaw & Memphis 1st 5's due 1949	99 -101⅝	5.07- 4.88	100¼ S	4.98- 4.98	102½-105½	4.82- 4.60	102 -106½	4.85- 4.52	100 -B	5.00-B
Long Island Railroad Refunding 4's due 1949	82 - 85½	5.34- 5.05	84⅜- 90⅜	5.17- 4.69	88⅜- 95	4.87- 4.36	90 - 96¾	4.74- 4.24	84¾- 91¼	5.24- 4.68
Central Pacific Rwy. Co. 1st Refunding 4's due 1949	86¾- 90	4.95- 4.70	88⅞- 92¼	4.80- 4.55	91¼- 96¾	4.64- 4.23	89¾- 96½	4.78- 4.25	87½- 93	5.00- 4.53
Wheeling and Lake Erie Railroad 1st Consolidated 4's due 1949	72 - 82	6.28- 5.34	81 - 89⅜	5.46- 4.75	87⅛- 93¼	4.97- 4.49	88½- 94	4.88- 4.44	83 - 90	5.40- 4.78
Elmira & Williamsport R. R. 1st Extended 4's due 1950	86-B	4.99-B	88-B	4.85-B	91¼-B	4.62-B	89-B	4.81-B	86-B	5.10-B
Total—X		45.66-43.14		44.06-41.46		41.51-38.88		41.90-38.34		45.90-41.59
Average†		5.07- 4.79		4.89- 4.61		4.61- 4.32		4.63- 4.26		5.10- 4.62

* Quotations not available.
B Bid.
S Sale.
X Total Yields of 9 Bonds excluding Choctaw & Memphis.
† Average Yield of 9 Bonds excluding Choctaw & Memphis.

SOURCES: Moody's 1933 Steam Railroads Bond Value Tables.

Exhibit B.

Order on Petition, etc.

And afterwards on, to wit, the 21st day of August, A. D. 1945, being one of the days of the regular July term of said Court, in the record of proceedings thereof, in said entitled cause, before the Honorable MICHAEL L. IGOE, District Judge, appears the following entry, to wit:

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

IN THE MATTER *of* THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.	No. 53209.

Order on Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest Due July 1, 1934 and Subsequently on Choctaw & Memphis Bonds.

This cause coming on to be heard this day upon the petition of Choctaw Bondholders' Committee for an order directing the payment of interest due July 1, 1934 and subsequently on Choctaw & Memphis bonds, the answers thereto of Joseph B. Fleming and Aaron Colnon, Trustees herein, and of First and Refunding Group, and the Court having heard the arguments of counsel and having considered the briefs filed in support of the said petition and of said answers, respectively, and being fully advised in the premises, it is

ORDERED:

That said petition be and the same is hereby denied.

ENTER:

IGOE,
Judge.

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And afterwards on, to wit, the 28th day of August, A. D. 1945 came the Trustees by their attorneys and filed in the Clerk's office of said Court a certain Petition in words and figures following, to wit:

Petition of Trustees for Authority to Make Cash Distribution in Amounts Specified in Plan of Reorganization.

Filed August 28, 1945

JOSEPH B. FLEMING and AARON COLNON, Trustees of the Estate of the principal debtor herein, respectfully show:

1. The Plan of Reorganization herein, dated May 1, 1944 and approved by order of court entered June 15, 1945, provides for distribution of cash to and among the several classes of creditors therein specified in the aggregate amount of $38,011,922. Of this amount, $3,732,172 was payable to Reconstruction Finance Corporation; but since the claim of the R. F. C. has been paid in full pursuant to order entered herein on November 8, 1944, the remaining total cash distributable under the Plan is $34,279,750.

2. In its Supplemental Report dated January 3, 1944, the Interstate Commerce Commission, on its own motion, made the following statement:

> "In view of the fact that the court may determine it desirable to authorize the distribution of the surplus cash as provided in the plan before the consummation of the plan the section of the order in respect of the payment on claims before the plan is consummated should be modified and as modified will read:
>
> "Except as otherwise herein expressly provided, and except as it may appear that such treatment would be in conflict or inconsistent with the rights of the claimants, in the event that prior to the consummation of the plan, any payment shall be made in respect of a claim, *other than a payment to be deducted from the cash distributable to creditors under the plan,* reducing such claim as of January 1, 1944, below the amount stated in appendix A to this supplemental report, new securities of each class aggregating the amount of the reduction, with no-par common stock figured at $100 a share, shall be withheld from those otherwise distributable in respect of such claim, in the proportionate amounts that new securities are allotted to such claim in the

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actual distribution of new securities, in appendix B, to each $1,000 principal amount of the obligation in question. New securities so withheld shall be treasury securities."

(The addition of the italicized portion constitutes the modification made by the Commission.)

The above-quoted provision appears as Section XVII in the Plan.

3. Petitioners have $25,687,237.74 in cash and $85,775,000 face amount of Government securities in their treasury as of August 15, 1945, and are thereby in position consistently with the financial commitments and requirements of the Trust Estate, including the amounts necessary to service the new securities for the period since January 1, 1944 (the effective date of the Plan), to disburse said $34,279,750 at this time. Petitioners have given consideration to the question of making said cash disbursement and conclude that to do so at this time is desirable and will be fair and equitable to the creditors entitled thereto.

4. Petitioners are therefore requesting authorization by this Court of the following cash payments to the holders (including mortgage or indenture trustees as pledgees) of the securities or claims designated below:

	Cash Payment for $1000 Face Amount of Bonds or $1000 Principal Amount of General Claim
C. R. I. & P. General Mortgage 4's, due 1988	$189.14
C. R. I. & P. First and Refunding Mortgage 4's, due 1934	see next paragraph
C. R. I. & P. Secured 4½'s, due 1952	see next paragraph
C. & M. First Mortgage 5's, due 1949	$500.00
C. O. & G. Consolidated Mortgage 5's, due 1952	174.67
St. P. & K. C. S. L. First Mortgage 4½'s, due 1941	87.97
R. I. A. & L. First Mortgage 4½'s, due 1934	118.45
L. R. & H. S. W. 4's, due 1939	77.11
B. C. R. & N. Consolidated First Mortgage 5's, due 1934	56.20
C. R. I. & P. Unsecured Convertible 4½'s, due 1960	12.42
General creditors	12.42

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In addition to the amounts to be received by the Corporate Trustee under the First and Refunding Mortgage due 1934 on account of the payments to be made to it, as aforesaid, in respect of pledged General Mortgage bonds, Choctaw, Oklahoma and Gulf bonds and Burlington, Cedar Rapids & Northern bonds, petitioners request authority to pay in respect of each First and Refunding Mortgage bond (whether publicly held or pledged as aforesaid) the amount of $46.27 per $1,000 face amount of bonds, so that the holders of each such bond shall receive $102.22 in cash, as provided in the Plan. Payments distributable to the Trustee under the Indenture in respect of the Secured 4½% bonds, due 1952, on account of the pledge therefor of First and Refunding Mortgage bonds, will provide $115 in cash for each $1,000 face amount of Secured 4½% bonds, as provided in the Plan.

It is proposed that the Mortgage Trustees receiving payments on account of pledged bonds as aforesaid shall not deduct from such payments any compensation or expenses which may be due them, but that the amounts of such compensation and expenses shall be fixed upon application to this Court and paid out of the funds in the Debtor's estate.

5. In the event that the payment of the cash distributable to creditors under the Plan is made prior to the consummation of the Plan as proposed above, petitioners believe that the order authorizing such payment should provide that the amounts so paid be applied toward the reduction of the total claims of said creditors as set forth in Appendix A to the Supplemental Report of the Interstate Commerce Commission dated May 1, 1944, and be received by said creditors upon the following terms and conditions:

(a) If the Plan is finally confirmed in these proceedings, said payment to the creditors shall be deducted from the cash distributable to creditors as provided in Section XI of said Plan, and shall be the cash distribution so provided for.

(b) If the Plan is changed or modified, or if any other plan of reorganization is finally approved and confirmed in these proceedings, then said payment shall be applied or credited as the Court may deem appropriate in the light of the terms of any

plan of reorganization which may be finally approved and confirmed in these proceedings.

(c) If no plan of reorganization is finally approved and confirmed in these proceedings, then said payment shall be applied or credited as the Court may hereafter direct.

6. Petitioners are of the opinion that in the event of such disbursement and payment to holders of claims evidenced by bonds, petitioners should be authorized to require each such bond and appurtenant coupons, if any, to be presented and stamped with such legend or legends as may be appropriate to evidence such payment. Said order should likewise provide that whenever any bond having such legend or legends stamped thereon is presented for exchange for bonds in different form or denomination, the latter bonds shall be stamped with such legend or legends before delivery in exchange.

7. The Trustees request that such order as may be made reserve the jurisdiction of this Court hereafter to make all adjustments deemed by it to be just and equitable or necessary to carry out the true intent of said order.

WHEREFORE, petitioners pray that an order be entered authorizing the disbursement and payment of cash in the amounts set forth herein upon the terms and conditions set forth in this petition, and that such other or further order or orders be made as to the Court may seem equitable and proper.

Respectfully submitted,

JOSEPH B. FLEMING,
AARON COLNON,
Trustees as aforesaid.

And afterwards on, to wit, the 17th day of September, A. D. 1945 came John C. Traphagen, et al., by their attorneys and filed in the Clerk's office of said Court a certain Notice of Appeal (Certificate of Mailing attached) in words and figures following, to wit:

BLEED THROUGH – POOR COPY

Notice of Appeal.

Filed September 1945

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ILLINOIS,
EASTERN DIVISION.

IN THE MATTER *of* THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, Debtor.	In Proceedings for the Reorganization of a Railroad No. 53209.

NOTICE IS HEREBY GIVEN that John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order entered herein on August 21, 1945, entitled "Order on Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest due July 1, 1934 and Subsequently on Choctaw & Memphis Bonds," and from every part of said order.

Dated: September 12, 1945.

CAHILL, GORDON, ZACHRY & REINDEL,
By DANIEL JAMES
A Partner.

Attorneys for John C. Traphagen and others as the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,

Office and Post Office Address,
63 Wall Street,
New York 5, N. Y.

COPY PRINTED CLOSE TO EDGE

CERTIFICATE OF MAILING.

I, ROY H. JOHNSON, Clerk of the United States District Court, for the Northern District of Illinois, Eastern Division, keeper of the Seal and Records of said Court, do hereby certify that on the 17th day of September, 1945, in accordance with Rule 73 (b) of the Rules of Civil Procedure for District Courts of the United States, I did cause to be mailed a copy of the foregoing Notice of Appeal to the following attorneys of record:

W. F. PETER,
1025 LaSalle St. Station,
139 W. VanBuren St., Chgo.

Mayer, Meyer, Austrian & Platt,
231 S. LaSalle St.,

Louis Cohen,
120 S. LaSalle St.,

Defrees, Buckingham, Fiske & O'Brien,
105 S. LaSalle St.,

Wilson & McIlvaine,
120 W. Adams St.,

Beekman & Bogue,
15 Broad St.,
New York, N. Y.

Alexander & Green,
120 Broadway
New York, N. Y.

Willkie, Owen, Otis, Farr & Gallagher,
15 Broad St.,
New York, N. Y.

Shearman & Sterling,
55 Wall St.,
New York, N. Y.

Harry Kirshbaum,
67 W. 44th St.,
New York, N. Y.

John Gerdes,
1 Wall St.,
New York, N. Y.

Isham, Lincoln & Beale,
72 W. Adams St.,
Chicago, Ill.

Mudge, Stern, Williams & Tucker,
20 Pine St.,
New York, N. Y.

Reconstruction Finance Corporation,
Washington, D. C.

Davis, Polk, Wardwell, Sunderland & Kiendl,
15 Broad St.,
New York, N. Y.

Milbank, Tweed & Hope,
15 Broad St.,
New York, N. Y.

Tenney, Sherman, Stead & McIntosh,
135 S. LaSalle St.,

Poppenhusen, Johnston, Thompson & Raymond,
11 S. LaSalle St.,

Gilruth & Beck,
29 S. LaSalle St.,

Gregory, Gilruth & Hunter,
105 S. LaSalle St.,
Chicago, Ill.

Wright, Gordon, Zachry, Parlin & Cahill,
63 Wall St.,
New York, N. Y.

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COPY BOUND CLOSE IN CENTER

arles O. Rundall,
5 So. LaSalle St.,
icago, Ill.

illiam J. Froelich,
1 S. LaSalle St.,

chael Geaas,
) W. Monroe St.,

J. Campbell,
N. LaSalle St.,

illiam C. Boyden, Jr.
5 S. LaSalle St.,

thbone, Perry, Kelley & Drye,
Broadway,
w York, N. Y.

ot, Clark, Buckner & Ballantine,
Nassau St.,
w York, N. Y.

hite & Case,
Wall St.,
w York, N. Y.

Sullivan & Cromwell,
48 Wall St.,
New York, N. Y.

Cook, Lehman, Greenman, Goldmark & Loeb,
20 Pine St.,
New York, N. Y.

Winston, Strawn & Shaw,
38 S. Dearborn St.,
Chicago, Ill.

Gann, Secord, Stead & McIntosh,
135 S. LaSalle St.,
Chicago, Ill.

Bowden, Taylor, Norville & Sprowl,
105 W. Adams St.,
Chicago, Ill.

Otis F. Glenn,
135 S. LaSalle St.,

ROY H. JOHNSON,

Roy H. Johnson, Clerk.

AL

And on the same day, to wit, the 17th day of September, D. 1945 came John C. Traphagen, et al, by their attorneys d filed in the Clerk's office of said Court a certain State- nt of Points in words and figures following, to wit:

Statement of Points.

Filed September 17, 1945

Come now John C. Traphagen, James E. Gowen, George Wilson and Charles G. Woodward constituting the Pro- tive Committee for Choctaw, Oklahoma and Gulf Rail- ad Company Consolidated Mortgage 5% Gold Bonds, due ay 1, 1952, and Choctaw and Memphis Railroad Company rst Mortgage 5% Gold Bonds, due January 1, 1949, and this their Statement of Points on which they intend to y on their appeal to the United States Circuit Court of ppeals for the Seventh Circuit from the order entered rein on August 21, 1945, entitled "Order on Petition of

Choctaw Bondholders' Committee for an Order Directing the Payment of Interest due July 1, 1934 and Subsequently on Choctaw & Memphis Bonds," and from every part of said order:

(1) The Court erred in said order failing to authorize and direct the Trustees of the Debtor Chicago, Rock Island and Pacific Railway Company, to pay promptly the semi-annual interest installments which matured on the Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds on July 1, 1934, and thereafter to and including July 1, 1945, together with interest on said installments from the respective maturity dates thereof to the date of payment, at the rate of 6% per annum.

(2) The Court erred in not holding that the holders of said bonds are legally and equitably entitled to receive said installments of interest, and interest on interest.

(3) The Court erred in said order in failing to authorize and direct said Trustees to pay interest installments on said bonds as such installments mature after July 1, 1945.

(4) The Court erred in not holding that the holders of said bonds are legally and equitably entitled to receive interest installments thereon as such installments mature.

(5) The record on which said order was made does not support said order.

Dated: September 12, 1945.

CAHILL, GORDON, ZACHRY & REINDEL
By DANIEL JAMES,
A Partner.

Attorneys for John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward as the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,

Office and Post Office Address:
63 Wall Street,
New York 5, N. Y.

And on the same day, to wit, the 17th day of September A. D. 1945 came JOHN C. TRAPHAGEN et al by their attorney and filed in the Clerk's office of said Court a certain Designation (Affidavit of mailing attached.) in words and figures following, to wit:

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Designation of Contents of Record on Appeal from Order Entered Herein on August 21, 1945, Entitled "Order on Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest Due July 1, 1934 and Subsequently on Choctaw & Memphis Bonds".

Filed September 1945

Now come John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, and designate the following portions of the record, proceedings, and evidence in the above captioned cause to be contained in the record on their appeal to the United States Circuit Court of Appeals for the Seventh Circuit from the order entered herein on August 21, 1945 entitled "ORDER ON PETITION OF CHOCTAW BONDHOLDERS' COMMITTEE FOR AN ORDER DIRECTING THE PAYMENT OF INTEREST DUE JULY 1, 1934 AND SUBSEQUENTLY ON CHOCTAW & MEMPHIS BONDS":

1. All of the items designated in the Choctaw Committee's designation dated August 2, 1945 entitled "DESIGNATION OF CONTENTS OF RECORD ON APPEAL FROM ORDER ENTERED HEREIN ON JUNE 14, 1945 (ORDER NO. 276-D), DENYING THE CLAIM FOR THE ALLOWANCE AND PAYMENT OF INTEREST ON MATURED AND UNPAID INSTALLMENTS OF INTEREST ON CHOCTAW & MEMPHIS BONDS."

2. Petition dated July 11, 1945, entitled "PETITION OF CHOCTAW BONDHOLDERS' COMMITTEE FOR AN ORDER DIRECTING THE PAYMENT OF INTEREST DUE JULY 1, 1934, AND SUBSEQUENTLY ON CHOCTAW & MEMPHIS BONDS."

3. "ANSWER OF JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES, TO PETITION OF CHOCTAW BONDHOLDERS' COMMITTEE FOR AN ORDER DIRECTING THE PAYMENT OF INTEREST DUE JULY 1, 1934 AND SUBSEQUENTLY ON CHOCTAW & MEMPHIS BONDS."

4. Order entered August 21, 1945, entitled "ORDER ON PETITION OF CHOCTAW BONDHOLDERS' COMMITTEE FOR AN ORDER DIRECTING THE PAYMENT OF INTEREST DUE JULY 1, 1934 AND SUBSEQUENTLY ON CHOCTAW & MEMPHIS BONDS."

5. Affidavit of Edith Brown, dated August 14, 1945, with Exhibits A and B attached thereto.

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6. Order No. 276-C entered June 15, 1945, entitled "FINDINGS, CONCLUSIONS AND ORDER AND DECREE APPROVING PLAN OF REORGANIZATION FOR THE DEBTORS" (R., pp. 4965-4976).

7. The General Balance Sheet Statement of the Rock Island Lines dated July 11, 1945, covering the month of May, 1945.

8. The Chicago, Rock Island and Pacific Railway Income Account Statement dated July 27, 1945, covering the month of June, 1945.

9. "PETITION OF TRUSTEES FOR AUTHORITY TO MAKE CASH DISTRIBUTION IN AMOUNTS SPECIFIED IN PLAN OF REORGANIZATION" (August, 1945).

10. Notice of Appeal dated September 12, 1945, by John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, from the order entered herein on August 21, 1945 entitled "ORDER ON PETITION OF CHOCTAW BONDHOLDERS' COMMITTEE FOR AN ORDER DIRECTING THE PAYMENT OF INTEREST DUE JULY 1, 1934 AND SUBSEQUENTLY ON CHOCTAW & MEMPHIS BONDS."

11. This designation of the record, proceedings, and evidence to be contained in the record on said appeal.

12. Statement of Points on said appeal, filed herein.

13. Affidavit as to service of this designation and said Statement of Points on appeal.

Dated: September 13, 1945.

Respecfully submitted,
CAHILL, GORDON, ZACHRY & REINDEL,
By Daniel James,
A Partner.

Attorneys for John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward as the Protective Committee for Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds,

Office and Post Office Address:
63 Wall Street,
New York 5, N. Y.

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Additional Designation of Record.

[Affidavit of Service of the foregoing Statement of Points and Designation of Contents on Appeal omitted in printing.]

And afterwards on, to wit, the 10th day of August, A. D. 1945 came the First & Refunding Group by their attorneys and filed in the Clerk's office of said Court a certain Designation of additional portions of the record in words and figures following, to wit:

Designation of Additional Portion of the Record, Proceedings and Evidence to Be Included in the Record on the Appeal by Choctaw Bondholders' Committee.

Filed August 10, 1945

To the Clerk of the above-named Court:

You are hereby requested, pursuant to Rule 75(a) of the Federal Rules of Civil Procedure, to include in the record on the appeal by the Choctaw Bondholders' Committee from the order entered herein on August 21, 1945, entitled "Order on Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest Due July 1, 1934 and Subsequently on Choctaw & Memphis Bonds", the following additional portion of the record, proceedings and evidence:

Answer of First and Refunding Group to "Petition of Choctaw Bondholders' Committee for an Order Directing the Payment of Interest Due July 1, 1934, and Subsequently on Choctaw & Memphis Bonds", verified August 8, 1945 and filed in the District Court on August 10, 1945.

Dated, September 21, 1945.

WILLKIE BUSHBY,
ROOT, CLARK, BUCKNER & BALLANTINE,
31 Nassau Street,
New York 5, N. Y.
WILLIAM C. BOYDEN, JR.,
135 South LaSalle Street,
Chicago, Illinois.
Attorneys for Group of Institutions Acting to Protect Their Interests as Holders of First and Refunding Mortgage 4% Bonds and Secured 4½% Bonds, Series A, of The Chicago, Rock Island and Pacific Railway Company.

COPY PRINTED CLOSE TO EDGE

Clerk's Certificate.

NORTHERN DISTRICT OF ILLINOIS, } ss.:
EASTERN DIVISION, }

I, ROY H. JOHNSON, Clerk of the District Court of th
United States for the Northern District of Illinois, d
hereby certify the above and foregoing to be a true an
complete transcript of the proceedings had of record mad
in accordance with the Designation filed in this Court i
the cause entitled Chicago, Rock Island and Pacific Rai
way Company, Debtor No. 53209 as the same appear fro
the original records and files thereof now remaining in m
custody and control except item 1, copies of which wer
heretofore transmitted to the United States Circuit Cou
of Appeal, and items 7 and 8 of Designation of conten
of Debtor's record on Appeal, which papers are not of re
ord in this Court for inclusion in this transcript.

IN TESTIMONY WHEREOF, I have hereunto set my han
and affixed the seal of said Court at my office, in the Cit
of Chicago, in said District, this 23rd day of October, A. D
1945.

ROY H. JOHNSON,
Clerk.

(SEAL)

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Stipulation as to Printing Record.

And afterwards, the following papers were filed and further proceedings were had and entered of record, in the United States Circuit Court of Appeals for the Seventh Circuit, to wit:

(Caption—8928)

Stipulation.

Entered November 1945.

WHEREAS, an appeal has been taken by John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward as a Protective Committee for the holders of Choctaw, Oklahoma and Gulf Railroad Company Consolidated Mortgage 5% Gold Bonds, due May 1, 1952, and Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, to the United States Circuit Court of Appeals for the Seventh Circuit, from an order and decree of the District Court of the United States for the Northern District of Illinois, Eastern Division (Order No. 276-D), entered on June 14, 1945, denying the claim for the allowance and payment of interest on matured and unpaid installments of interest on Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds, and from every part of said order and decree;

AND WHEREAS, a record has been prepared, certified and transmitted to the Clerk of the Circuit Court of Appeals as the record on appeal herein;

IT IS HEREBY STIPULATED, CONSENTED AND AGREED, by and between the undersigned with respect to said appeal, subject to the approval of the Court;

1. That such portions of the transcript of the record on appeal as are designated in Appendix A attached hereto, shall be omitted from the printed record on appeal in the above-entitled proceedings.

2. That the omission of said portions of the transcript of the record on appeal on the printing thereof shall not be construed as a determination that the said portions of the transcript omitted are not material to the consideration of the questions presented in this case.

3. That the appellants and the appellees agree that any of said appellants and appellees may refer, in oral argu-

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ment or in printed brief or memoranda to any part of the transcript of the record on appeal herein, although not printed, in the same manner and to the same extent as if included in the printed record.

CAHILL, GORDON, ZACHRY & REINDEL
Cahill, Gordon, Zachry & Reindel

ALEXANDER & GREEN
Alexander & Green

ROOT, CLARK, BUCKNER & BALLANTINE
Root, Clark, Buckner & Ballantine

WILLKIE, OWEN, OTIS, FARR & GALLAGHER
Willkie, Owen, Otis, Farr & Gallagher

WHITE & CASE
White & Case

BEEKMAN & BOGUE
Beekman & Bogue

RATHBONE, PERRY, KELLEY & DRYE
Rathbone, Perry, Kelley & Drye

SHEARMAN & STERLING & WRIGHT
Shearman & Sterling & Wright

SULLIVAN & CROMWELL
Sullivan & Cromwell

HARRY KIRSHBAUM
Harry Kirshbaum

COOK, LEHMAN, GREENMAN, GOLDMARK & LOEB
Cook, Lehman, Greenman, Goldmark & Loeb

DAVIS, POLK, WARDWELL, SUNDERLAND & KIENDL
Davis, Polk, Wardwell, Sunderland & Kiendl

MILBANK, TWEED & HOPE
Milbank, Tweed & Hope

JOHN GERDES
John Gerdes

BOWDEN, TAYLOR, NORVILLE & SPROWL
Bowden, Taylor, Norville & Sprowl

ISHAM, LINCOLN & BEALE
Isham, Lincoln & Beale

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Stipulation as to Printing Record.

TENNEY, SHERMAN, ROGERS & GUTHRIE
Tenney, Sherman, Rogers & Guthrie

GANN, SECORD, STEAD & MCINTOSH
Gann, Secord, Stead & McIntosh

POPPENHUSEN, JOHNSTON, THOMPSON & RAYMOND
Poppenhusen, Johnston, Thompson & Raymond

MUDGE, STERN, WILLIAMS & TUCKER
Mudge, Stern, Williams & Tucker

LOUIS COHEN
Louis Cohen

MICHAEL GESAS
Michael Gesas

DEFREES, FISKE, O'BRIEN & THOMPSON
Defrees, Fiske, O'Brien & Thompson

H. J. CAMPBELL
H. J. Campbell

GREGORY, GILRUTH & HUNTER
Gregory, Gilruth & Hunter

WILSON & MCILVAINE
Wilson & McIlvaine

WILLIAM C. BOYDEN, JR.
William C. Boyden, Jr.

CHAS. O. RUNDALL
Chas. O. Rundall

W. F. PETER
W. F. Peter

OTIS F. GLENN
Otis F. Glenn

APPENDIX A.

The item numbers hereinbelow referred to correspond to the descriptive numbers contained in the Choctaw Committee's "Designation of Contents of Record on Appeal from Order Entered Herein on June 14, 1945 (Order No. 276-D), Denying the Claim for the Allowance and Payment

of Interest on Matured and Unpaid Installments of Interest on Choctaw & Memphis Bonds" dated August 2, 1945:

"Proposed Formula for Segregating Revenues and Expenses of Various Mortgaged Lines of the Rock Island Lines, June 4, 1937" (R., Vol. 3, pp. 1591-1617), attached to Order No. 106-A—Item 16 in said Designation.

"Amended Modified Formula for Segregating Revenues and Expenses of Various Mortgaged Lines of Rock Island Lines for the year 1937", (R., Vol. 4, pp. 2205-2227), attached as Exhibit A to Petition for Order No. 106-B—Item 17 in said Designation.

Item No. 20, Order No. 106-F, entered October 14, 1938, entitled "Order on Various Petitions, etc., relating to Formula Matters" (R., Vol. 5, pp. 2587-2589).

Item No. 29, Interstate Commerce Commission, Finance Docket No. 10028, entitled "Supplemental Report of the Commission", decided July 31, 1941 (R., Vol. 6, pp. 3345-3472) *except* the portion thereof entitled "Petition of Choctaw Committee" (R., Vol. 6, p. 3380, line 13 through pp. 3384 line 4 both inclusive) which portion shall be printed.

Item No. 30, Interstate Commerce Commission, Finance Docket No. 10028, entitled "Report of the Commission on Further Consideration", and Amendatory Order, decided October 2, 1941 (R., Vol. 6, pp. 3472-1 to 3472-32).

Item No. 31, Interstate Commerce Commission, Finance Docket No. 10028, entitled "Supplemental Report of the Commission", decided April 6, 1942 (R., Vol. 6, pp. 3472-33 to 3472-39).

Item No. 35, Interstate Commerce Commission, Finance Docket No. 10028, entitled "Supplemental Report of the Commission", dated May 1, 1944, Document No. 287-A (R., pp. 4545-4614).

Item No. 50, Report of the Trustees of the Debtor to Judge Igoe, dated April 25, 1944.

Order Approving Stipulation.

(Caption—8928)

Before: Hon. Otto Kerner, Circuit Judge.

It is ordered that the stipulation of counsel relative to the printing of and reference to the transcript of record be, and the same is hereby, approved.

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Order.

Entered November 1945.

(Captions—8928, 8946)

Upon application, for good cause shown by the appellants John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting a Protective Committee for Holders of Choctaw & Memphis Railroad Company First Mortgage 5% Gold Bonds due January 1, 1949, by Cahill, Gordon, Zachry & Reindel, their attorneys, it is hereby

ORDERED, that the above entitled appeals be and the same hereby are consolidated for purposes of argument; for purposes of printing the record and brief on appeal; and for any and all other purposes whatsoever, and one mandate shall issue for both appeals.

/s/ OTTO KERNER.

Dated: November 5, 1945.

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UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of the printed record, filed on the eighteenth day of January, 1946, in:

Cause No. 8928-8946.

In the Matter of

The Chicago, Rock Island and Pacific Railway Company, Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, Constituting the Protective Committee for Holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949,

Appellees.

vs.

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,

Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of August, A. D. 1946.

(signed) Kenneth J. Carrick,
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

At a regular term of the United States Circuit Court of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the second day of October, in the year of our Lord one thousand nine hundred and forty-five and of our Independence, the one hundred and seventieth.

In the Matter of the Chicago, Rock Island and Pacific Railway Company,

Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949,

Appellants,

8928-8946 *vs.*

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,

Appellees.

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

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And, to-wit: On the second day of April, 1946, there was filed in the office of the Clerk of this Court, a Stipulation of Counsel, which said stipulation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of the Chicago, Rock Island and Pacific Railway Company, Debtor. ——— John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, *Appellants,* 8928-8946 *vs.* Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*, *Appellees.*	In Proceedings for the Reorganization of a Railroad. 8928. 8946.

STIPULATION.

In view of the entry by the District Court of the United States for the Northern District of Illinois, Eastern Division, of an order that the Trustees of the estate of the Debtor named above shall pay all coupons which have heretofore matured and remain unpaid on the Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds and shall hereafter pay the coupons on said bonds as they currently mature, the undersigned as counsel for John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Pro-

tective Committee for holders of said bonds hereby withdraw their appeals in the above entitled matter to the extent that the relief sought for in said appeals involves the reversal of the District Court's orders in so far as they deny the prayer that the Trustees of the Debtor be authorized and directed to pay promptly the semi-annual interest installments which have matured and remain unpaid on said bonds and in so far as they deny the prayer that said Trustees be auhtorized and directed to pay interest installments on said bonds as such installments hereafter mature, and said Protective Committee hereby consents to the dismissal of said appeals to the extent, but only to the extent, specified above. Such partial withdrawal of said appeals and such consent to partial dismissal thereof are in all respects subject to the condition that this Circuit Court of Appeals shall permit such a partial withdrawal and partial dismissal without prejudice to the other issue raised by said appeals—namely, the issue of whether the holders of said bonds are entitled to receive interest on matured coupons not paid on the dates of their maturity, from the respective maturity dates thereof to the respective dates of payment.

Dated: March 30, 1946.

Cahill, Gordon, Zachry & Reindel,
As counsel for John C. Traphagen, James E. Gowen, George H. Wilson and George G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949.

W. F. Peter,
As counsel for Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, Debtor.

Endorsed: Filed April 2, 1946. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the third day of April, 1946, the following further proceedings were had and entered of record, to-wit:

Wednesday, April 3, 1946.

Court met pursuant to adjournment.

Before:

Hon. William M. Sparks, Circuit Judge.
Hon. J. Earl Major, Circuit Judge.

In the Matter of the Chicago, Rock Island and Pacific Railway Company,

Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949,

Appellants,

8928-8946 *vs.*

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,

Appellees.

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is ordered by the Court that the stipulation of counsel, filed April 2, 1946, authorizing the partial withdrawal and partial dismissal of the above entitled appeals without prejudice to the other issue raised by said appeals, be, and the same is hereby, approved.

And, afterwards, to-wit: On the twelfth day ow April, 1946, the following further proceedings were had and entered of record, to-wit:

Friday, April 12, 1946.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

In the Matter of the Chicago, Rock Island and Pacific Railway Company,
Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949,
Appellants,

8928-8946 *vs.*

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,
Appellees.

} Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and on oral argument by Mr. Daniel James, counsel for appellants, and by Mr. W. F. Peter, Mr. Wilkie Bushby and Mr. Harry Kirshbaum, counsel for appellees, and the Court takes this matter under advisement.

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And afterwards, to-wit: On the seventeenth day of June, 1946, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 8928, 8946. October Term, 1945, April Session, 1946.

In the Matter of the Chicago, Rock Island and Pacific Railway Company,

Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949,

Appellants,

vs.

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,

Appellees.

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

June 17, 1946.

Before EVANS, SPARKS, *Circuit Judges,* and LINDLEY, *District Judge.*

LINDLEY, *District Judge.* Appellants, constituting a protective committee for the holders of bonds secured by first mortgage on 280 miles of railroad extending from the Mis-

sissippi river near Memphis to the Arkansas-Oklahoma line, complain of an order of the District Court refusing to award them interest upon the matured coupons. The issue arose in proceedings under Section 77 of the Bankruptcy Act for reorganization of the Chicago, Rock Island and Pacific Railway Company and certain subsidiary corporations owning and operating some 8000 miles of railroad. These bonds were issued January 2, 1899, secured by mortgage on the entire line of the Choctaw & Memphis R. R. In 1900 that company sold all its property to the Choctaw, Oklahoma & Gulf R. Co., commonly known as the C. O. & G., subject to the bond issue of $3,524,000, which the purchaser assumed. The C. O. & G., then owning approximately 1000 miles of railroad, in 1902 sold its capital stock and leased its lines for 999 years to Rock Island.

The proceedings in the bankruptcy court was filed June 7, 1933. The C. O. & G. petitioned that it be allowed to effect reorganization as a part of that of the Rock Island System. Trustees were appointed for both the principal debtor and the subsidiary debtors, but operation of the entire system has at all times been continued by the trustees of the principal debtor.

In the reorganization plan, confirmed by the District Court and now in process of consummation, the court directed that the C. & M. bonds should not be affected by the reorganization, a conclusion inspired undoubtedly by the fact that it is undisputed that these bonds are adequately secured and that the annual earnings properly allocable to the division upon which they are a lien exceeds substantially the interest requirements. It follows from the District Court's findings and judgment that the bonds of the C. & M. are no part of the reorganization, in no wise affected by it, and, so far as rights and remedies are concerned, occupy the same position they would have had there been no bankruptcy.

From time to time during the twelve years in which the reorganization has been pending, appellants petitioned the District Court to allow to them their interest as it matured and, after maturity of the coupons, interest upon the coupons. Originally there was an appeal also from an order refusing payment of the principal of the matured coupons, but, subsequent to appeal, the trustees petitioned for and obtained leave to, and did pay the C. & M. bondholders the face amount of the coupons, so that the appeal now involves

only the question of whether appellants are entitled to simple interest upon the coupons after their maturity. At one time payment of interest upon certain coupons was directed, but this was without prejudice to the rights of all parties and can not be considered as any precedent against appellees. Final action was postponed upon the question of interest upon matured coupons until the fall of 1945, when the court held that appellants were not entitled to it.

Early in the course of the proceedings, the court ordered sequestration of funds from the respective parts of the railroad system but that procedure made necessary expenditure of so much time and money that the practice was abandoned. The court, however, entered an order providing that all bondholders' rights should be preserved as if presentment and demand for payment had been made and default in payment had occurred.

Our rather narrow question, therefore, is whether the holders of these bonds, adequately secured, protected by income greatly in excess of interest requirements and expressly excluded from the operation of a plan, may, under the circumstances of this case, recover interest upon coupons as a part of their secured indebtedness after the dates of maturity. Though simple in character the question does not lend itself to a too easy solution.

As we have seen these bonds are not subject to, involved in or affected by the reorganization. They bear coupons for interest maturing at stated intervals. The coupons are void of express covenant as to interest after maturity as are likewise the bonds themselves and the mortgage securing them. The latter provides security for the payment of principal and interest "according to the true intent and meaning" or "tenor" of the bonds and coupons.

In these circumstances the bankruptcy court was bound to allow or disallow such interest as the pertinent law makes mandatory. True, the Bankruptcy Act, Section 77, endows the court with power to reduce, modify and extend security of debts if found necessary in order to effectuate a fair and equitable plan of reorganization. It is the purpose of the section that the court shall so reorganize the debtor as to result in no excessively over-capitalized financial structure, in order that income may meet fixed charges and costs of operation. But this power to deal with or modify securities, we think, in no way affects appellants who are no part of the reorganization but constitute se-

cured holders of instruments wholly unaffected thereby. Hence it is improper to say that the bankruptcy court had the power to alter their securities. Indeed, quite the contrary is true, for, in their preferred situation, they hold securities wholly outside the reorganization. Their position is that of a mortgagee in ordinary bankruptcy where the bankrupt estate is concerned only with the equity over and above the securities of the mortgage holder and the mortgage is to be paid in full before the subordinate or unsecured creditors participate at all. Thus in discussing the rights of a mortgagee in a bankruptcy case, in *Coder* v. *Arts*, 152 F. 943 (CCA8) at 950 the court said: "By the terms of the note and mortgage the mortgagor agreed to pay interest on his debt until it was paid, and that the mortgaged lands might be sold by the mortgagee, and that their proceeds might be applied to the payment of this debt and interest. The covenant for the sale and the application of the proceeds of these lands to the payment of the debt and interest was valid and binding, and it ran with the land, so that when the latter came to the hands of the trustee, it was mortgaged for the payment of the interest as much as for the payment of the principal, and the proceeds of its sale necessarily came to his possession subject to the same charge. Another rule might prevail if the proceeds of the mortgaged property were insufficient to pay the mortgage debt and its interest in full and the mortgagee was seeking to collect an unpaid balance by sharing with other creditors in the distribution of the common property. * * * But the proceeds of these mortgaged lands appear to be ample to pay the principal and interest of the debt to the mortgagee Arts, and where a trustee sells mortgaged property of the bankrupt's estate free of the mortgage, and the proceeds of the sale are sufficient for that purpose, the mortgagee is entitled to payment of the interest upon his mortgage debt as well as the principal, out of the proceeds in accordance with the terms of the note and mortgage." In *Coder* v. *Arts*, 213 U. S. 223 at 245 the Supreme Court said, in affirming the decision, "nor do we think the Circuit Court of Appeals erred in holding that inasmuch as the estate was ample for that purpose Arts (mortgagee) was entitled to interest on his mortgage debt."

The ordinary bankruptcy trustee succeeds to a bankrupt's title to encumbered property, subject to the encum-

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brance. If there is no equity for the estate over and above the lien, he is not required to accept it, and if, under the local law, the income of the mortgaged property would go to the mortgagee, that rule will abide in the bankruptcy court. *In re Wakey*, 50 F. 2d 869 (CCA7); *In re De Tamble*, 88 F. 2d 893 (CCA7). "The mortgagee is the equitable owner of the bankrupt's real estate covered by the mortgage, and it would be inequitable to take the rents from what is really his property and divide them among general creditors. *In re Industrial Cold Storage & Ice Co.*, 163 F. 390; *In re Torchia*, 188 F. 207 (CCA3); *In re Dooner & Smith*, 243 F. 984; *Bindseil* v. *Liberty Trust Co.*, 248 F. 112 (CCA3). This is the trend of decisions generally. *Mortgage Loan Co.* v. *Livingston*, 45 F. 2d 28 (CCA8); *In re Wakey*, 50 F. 2d 869 (CCA7)." *Associated Co.* v. *Greenhut*, 66 F. 2d 428 (CCA3), writ of certiorari denied in 290 U. S. 695, 696. And when liens are of different dignity, claims of a higher rank will be paid in full with interest during receivership, even though no assets are available to pay those of lower grade. *Board of Comrs.* v. *Bernardin*, 74 F. 2d 809 (CCA10). We think it has never been successfully contended in bankruptcy proceedings that a secured creditor is not entitled to interest accruing up to the time of payment to him, if the encumbered assets are sufficient to satisfy his entire claim. As has been suggested, any other result would lead to destruction of valid liens. See *Peoples Homestead Assn.* v. *Bailette*, 33 F. 2d 561 (CCA5); *San Antonio Loan & Trust Co.* v. *Booth*, 2 F. 2d 590 (CCA5); *In re Alpine Petroleum Corp.*, 41 F. Supp. 682.

So here, appellants, adequately secured, must receive "their full bundle of rights" before the principal debtor or any of the subsidiary debtors have any right in equity or law to any part of the property securing their bonds. It follows, therefore, it seems to us, that the court must determine the rights of appellants wholly free of any significance of the bankruptcy proceedings. It must determine what the bonds, coupons and mortgage mean and enforce them according to their "true intent and meaning" and "tenor".

This leads to the question of how those rights are to be interpreted. The coupons, at the option of appellants, were payable in Philadelphia. In the absence of other significant circumstances, the right of the holder of a matured coupon

to receive interest thereon is determinable by the place where the coupon is payable. *Andrews* v. *Pond*, 13 Peters 64, 77, 78; *Pana* v. *Bowler*, 107 U. S. 529, 546; *Scotland County* v. *Hill*, 132 U. S. 107, 117; *Cairo* v. *Zane*, 149 U. S. 122, 142; *Hughes County, S. D.* v. *Livingston*, 104 F. 306, 322 (CCA8); cert. denied, 181 U. S. 623; *Roswell Drainage Dist.* v. *Parker*, 53 F. 2d 793, 797 (CCA10); Restatement of the Law of Conflict of Laws, Sections 413, 417. And in Pennsylvania, it seems to be undisputed, interest coupons are negotiable instruments which may be detached from the bonds and reduced to judgment by the holder separately from the bond. Interest upon them is payable after maturity, even in the absence of any covenant to that effect; the coupons pass from hand to hand by delivery as do promissory notes payable to bearer, and public policy requires that punctual payment of interest should be enforced by obliging the debtor to compensate his creditors for default, by paying interest upon the amount due. The coupons are promises to pay liquidated interest on a certain definite date. On that date they mature. Thereafter the Statute of Limitations begins to run against them, even though the bonds have not matured, and, like other negotiable instruments and other undisputed liquidated demands for money, they bear interest from the date of maturity. *County of Beaver* v. *Armstrong*, 44 Pa. St. (8 Wright) 63; *North Pa. R. Co.* v. *Adams*, 54 Pa. 94; *Philadelphia & R. R. Co.* v. *Knight*, 124 Pa. 58, 16 Atl. 492; *Appeal of Cadwalader, et al.*, 249 Pa. 239, 94 Atl. 833; *McDowell* v. *North Side Bridge Co.*, 251 Pa. 585, 97 Atl. 97.

We might observe incidentally, but incidentally only, as we viewed that law, that such has likewise been the ruling of federal courts where the question has been squarely presented. *Gelpcke et al.* v. *The City of Dubuque*, 1 Wall. 175; *Aurora City* v. *West*, 7 Wall. 82; *Town of Genoa* v. *Woodruff, et al.*, 92 U. S. 502; *Cromwell* v. *County of Sac*, 96 U. S. 51; *Brine* v. *Insurance Co.*, 96 U. S. 627; *Amy* v. *Dubuque*, 98 U. S. 470; *Town of Koshkonong* v. *Burton*, 104 U. S. 668, 676-7; *Edwards* v. *Bates County*, 163 U. S. 269, 272; *Roswell Drainage Dist.* v. *Parker*, 53 F. 2d 793, 797 (CCA10); *Sears* v. *Greater New York Development Co.*, 51 F. 2d 46, 49 (CCA1), cert. denied 284 U. S. 668. Thus the Supreme Court said, in *Aurora City* v. *West*, *supra*, "Where there is a contract to pay money on a day fixed, and the contract is broken, interest, as a general, rule, is

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allowed, and that rule is universal in respect to bills and notes payable on time. Governed by that rule this court in the case of *Gelpcke* v. *Dubuque*, held that the plaintiff, in a case entirely analogous, was entitled to recover interest." And in *Cromwell* v. *County of Sac.* 96 U. S. 51, the court said "it follows, from the views expressed, that the plaintiff was entitled to judgment for the amount of the four bonds and the coupons in suit, with interest on the bonds after maturity until judgment at the rate of ten per cent a year, and with interest on the coupons after their maturity until judgment at the rate of six per cent a year."

We believe, however, that federal decisions are of no binding effect here, but rather that, under the doctrine of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, where the bankruptcy court is charged with the duty of protecting a lien unaffected by bankruptcy, the law of the state of performance must control. Of course the bankruptcy court determines all questions arising under the bankruptcy statute in accord with federal decisions, but when it deals with the right of a citizen to enforce a lien under the state law, unaffected by bankruptcy, or interprets the rights of the mortgagee, it must grant relief demanded by the laws of the state. *American Iron and Steel Mfg. Co.* v. *Seaboard Air Line Railway*, 233 U. S. 261; *In re American Fuel & Power Co.*, 151 F. 2d 470 (CCA6); *Investors Syndicate* v. *Smith*, 105 F. 2d 611 at 620 (CCA9). Accordingly it is apparent, therefore, that when we interpret the mortgage securing the coupons according to the "tenor thereof," as determined by the state of Pennsylvania, the holders are entitled to simple interest on the coupons after their maturity.

Appellees suggest that, inasmuch as the mortgage does not specifically mention a lien for interest upon matured coupons, appellants have "given up" or have failed to preserve a mortgage lien for such interest. But we have seen that the indenture pledges the property to secure the payment of principal and interest according to "the true tenor" of the bonds and interest and that the true legal tenor of the coupons, properly interpreted, includes a legal obligation to pay interest after maturity. It follows that, by its necessary legal implication, the mortgage creates and preserves a lien for the bonds, coupons and simple interest on the coupons after maturity.

Appellees argue that it is not fair and equitable to other creditors to provide for such payment of interest on matured coupons and that is discriminatory so to do. The fallacy of this reasoning lies in the fact that appellants are not a part of the plan and have no part in the reorganization but constitute prior parties in interest who, the court has expressly found, are fully secured, and, therefore, shall not be affected by the plan and whose security shall remain unaffected by it.

We conclude that the court was in error in refusing to allow and order paid simple interest on the coupons after their respective dates of maturity.

The judgment is reversed with directions to proceed in accord with this opinion.

Endorsed: Filed June 17, 1946. Kenneth J. Carrick, Clerk.

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And on the same day, to-wit: On the seventeenth day of June, 1946, the following further proceedings were had and entered of record, to-wit:

Monday, June 17, 1946.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Walter C. Lindley, District Judge.

In the Matter of the Chicago, Rock Island and Pacific Railway Company,

Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949,

Appellants,

8928-8946 *vs.*

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,

Appellees.

Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered, adjudged and decreed by this Court that the orders or decrees of the said District Court in this cause appealed from be, and the same are hereby, reversed, with costs, and that this consolidated appeal be, and the same is hereby, remanded to the said District Court with directions to proceed in accordance with the opinion of this Court filed this day.

And afterwards, to-wit: On the twelfth day of August, 1946, there was filed in the office of the Clerk of this Court, a Designation of Record, which said designation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 8928 and 8946.

In the Matter of the Chicago, Rock Island and Pacific Railway Company, Debtor.	
John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, *Appellants*, *vs.* Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*, *Appellees.*	In Proceedings for the Reorganization of a Railroad. Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

DESIGNATION OF RECORD.

The appellees, Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island nad Pacific Railway Company, hereby designate the following portions of the record and proceedings in this Court for certification to the Supreme Court of the United States for review in support of a petition for writ of certiorari to be prepared and filed by said appellees in said Supreme Court:

1. The printed record in No. 8928 and in No. 8946, filed September 21, 1945 and October 24, 1945, respectively.

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2. Order taking cause under advisement, filed April 12, 1946.

3. Opinion, filed June 17, 1946.

4. Judgment, filed June 17, 1946.

5. This designation and any supplements or additions thereto.

6. Any orders of court entered or to be entered in connection with this record or with any petition for writ of certiorari to be filed by said appellees herein.

Joseph B. Fleming and Aaron Colnon,
as Trustees of The Chicago, Rock
Island and Pacific Railway Company,
By W. F. Peter,
By Otis F. Glenn,
Attorneys for said Trustees,
1025 LaSalle Street Station,
Chicago 5, Illinois.

Endorsed: Filed August 12, 1946. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twenty-third day of August, 1946, there was filed in the office of the Clerk of this Court, a Supplemental Designation of Record, which said supplemental designation is in the words and figures following, to-wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

Nos. 8928 and 8946.

In the Matter of the Chicago, Rock Island and Pacific Railway Company, Debtor.	
John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949, *Appellants*, *vs.* Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*, *Appellees.*	In Proceedings for the Reorganization of a Railroad. Consolidated Appeals from the District Court of the United States for the Northern District of Illinois, Eastern Division.

SUPPLEMENTAL DESIGNATION OF RECORD.

The appellees, Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, hereby designate the following additional portions of the record and proceedings in this Court for certification to the Supreme Court of the United States for review in support of a petition for writ of certiorari to be prepared and filed by said appellees in said Supreme Court:

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1. Stipulation filed herein on April 2, 1946.
2. Order approving stipulation entered April 3, 1946.

Joseph B. Fleming and Aaron Colnon,
as Trustees of The Chicago, Rock
Island and Pacific Railroad Company,
By W. F. Peter,
Otis F. Glenn,
Attorneys for said Trustees,
1025 LaSalle Street Station,
Chicago 5, Illinois.

Endorsed: Filed August 23, 1946. Kenneth J. Carrick, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages contain a true copy of proceedings had and papers filed as called for by Designation of Record filed August 12, 1946, and Supplemental Designation of Record, filed August 23, 1946, in:

Cause No. 8928-8946.

In the Matter of
The Chicago, Rock Island and Pacific Railway Company, Debtor.

John C. Traphagen, James E. Gowen, George H. Wilson and Charles G. Woodward, Constituting the Protective Committee for Holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, Due January 1, 1949,

Appellees.

vs.

Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*,

Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 28th day of August, A. D. 1946.

(signed) Kenneth J. Carrick,
(seal) *Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.*

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SEP 3 1946
CHARLES ELMORE CROPLEY
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 4541

JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, ET AL.,

Petitioners,

vs.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON AND CHARLES G. WOODWARD, CONSTITUTING THE PROTECTIVE COMMITTEE FOR HOLDERS OF CHOCTAW AND MEMPHIS RAILROAD COMPANY FIRST MORTGAGE 5% GOLD BONDS, DUE JANUARY 1, 1949,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

W. F. PETER and
OTIS F. GLENN,
Attorneys for Petitioners, Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company,
1025 La Salle Street Station,
Chicago, Illinois.

THE BLAKELY-WALKER PRINTING COMPANY, 310 WEST JACKSON, CHICAGO

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IN THE

Supreme Court of the United States

OCTOBER TERM 1946.

No. .....

JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, ET AL.,

Petitioners,

vs.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON AND CHARLES G. WOODWARD, CONSTITUTING THE PROTECTIVE COMMITTEE FOR HOLDERS OF CHOCTAW AND MEMPHIS RAILROAD COMPANY FIRST MORTGAGE 5% GOLD BONDS, DUE JANUARY 1, 1949,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioners respectfully show:

Summary Statement of the Matter Involved.

This is a proceeding for the reorganization of a railroad under Section 77 of the Bankruptcy Act (11 U. S. C. A. § 205). The principal debtor, The Chicago, Rock Island

and Pacific Railway Company, filed a petition for reorganization on June 7, 1933 with the District Court of the United States for the Northern District of Illinois. On October 24, 1933, Choctaw, Oklahoma and Gulf R. Co., a wholly owned subsidiary, filed its petition in the same proceeding. (R. 14.) A portion of the C. O. & G. railroad consists of 280 miles of line in Arkansas which it purchased in 1900 from Choctaw & Memphis R. Co. (now defunct); said line was acquired subject to the lien of the Choctaw & Memphis First Mortgage securing $3,524,000 principal amount of 5% bonds maturing January 1, 1949 (R. 13); the mortgage was assumed by the C. O. & G. The text of the mortgage appears at R. pp. 61-88. The interest coupons are payable semi-annually in New York or Philadelphia on January 1 and July 1 in each year. (R. 63.) The coupon due January 1, 1934 was paid by order of court on February 5, 1935. (R. 38.) No later interest coupons were paid prior to the date of approval by the court of the plan of reorganization, June 15, 1945. (R. 189.) Subsequently, on August 20, 1945, the Trustees asked leave of court to make certain cash distributions provided for in the plan, including $1,762,000 representing accrued and unpaid interest on the C&M bonds to January 1, 1944, the effective date of the plan (R. 222); the court authorized such cash distribution, and the same was made accordingly.

The fundamental question here is whether the Choctaw & Memphis bondholders are entitled to recover interest on the interest represented by the coupons after their respective dates of maturity. No other bond issue in this proceeding has been allowed interest on interest, notwithstanding the coupon interest was fully earned by some of the mortgage divisions and was not paid on the due dates. See *In re Chicago, Rock Island and Pacific Ry. Co.*, 50 Fed. Supp., pp. 849-850.

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Pursuant to sub-section (c)(10) of Section 77, the court approved a formula for segregation of revenues and expenses to mortgage divisions and ordered it to be applied for each six months' period beginning January 1, 1936 and ending December 31, 1937. (R. 49, 56.) The formula assumes that the various mortgage divisions are independent, separately operated railroads, and attempts to ascertain the revenues obtained and expenses incurred by each. As appears from the first opinion of the District Court, reported 50 Fed. Supp. 835, 846, the Commission made certain adjustments in both 1936 and 1937 earnings as ascertained by application of the formula, and used the adjusted formula results in making allocations of the several classes of new securities under the plan. The adjusted formula results for the test periods in question showed the average annual adjusted income of the Choctaw & Memphis mortgage division to be $425,093*, and of the remainder of the C. O. & G. estate to be a deficit of $165,299*, or an average annual net income for the estate as an entirety of $259,794. The annual interest accruals on the C&M bonds amounted to $176,200.

The plan of reorganization of July 31, 1941, provided that the lien of the C&M bonds should be preserved and their maturity date extended from January 1, 1949 to January 1, 1969, with the annual interest rate reduced from 5 per cent to 4 per cent; that for the accrued and unpaid interest, the bondholders should receive an equal face amount of new first mortgage bonds of the reorganized company. (R. 128.) By supplemental order, the Commission modified the plan by providing that the accrued and unpaid interest be paid in cash. (R. 164-165.)

* See Schedule A, Chicago, Rock Island and Pacific Ry. Co. Reorganization, 252 I. C. C. at p. 489, lines 28, 29 and 30. This is Item No. 31 of Appellants' Designation of Record and was omitted in printing by stipulation. (R. 236.)

The plan of reorganization, approved June 15, 1945, contained the following provision (R. 166):

"XXII. Construction of Plan.

"The construction of the plan by the court shall be final and conclusive. The court may correct any defect, supply any omission, or reconcile any inconsistency in such manner and to such extent as may be necessary or expedient in order to carry out the plan effectively."

Pursuant to this authority, the district court corrected the plan in respect of its provisions relating to the C&M bonds as follows (R. 193-194):

"8. Under the terms of the plan, it is provided, 'That the construction of the plan by the Court shall be final and conclusive. The Court may correct any defect, supply any omission or reconcile any inconsistency in such manner and to such extent as may be necessary or expedient in order to carry out the plan effectively.' The Court finds that the following correction should be made for the reasons stated in the opinion* of the Court filed herein on May 14, 1945.

"The following paragraph contained in the supplemental order of the Commission dated May 1, 1944 which reads:

" 'The Choctaw & Memphis Railroad Company first mortgage, dated January 2, 1899, will be assumed by the reorganized company, and the $3,524,000 of 5-percent bonds issued thereunder and outstanding in the hands of the public shall remain outstanding as an obligation of the reorganized company after such bonds have been presented for stamping with a legend showing that the maturity date thereof has been extended to January 1, 1969, and that the bond interest rate thereon has been reduced to 4 per cent per annum with respect to the installments of interest fall-

* See, R. 164-166.

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ing due subsequent to January 1, 1944, and in the case of bonds in coupon form for the attachment of additional coupons for interest during the extension period. For the $1,762,000 of unpaid accrued interest the holders of the bonds shall receive cash, as hereinafter stated.'

should be corrected by substituting the following therefor:

"'The Choctaw & Memphis Railroad Company first mortgage dated January 2, 1899, and the $3,524,000 of 5-percent bonds issued thereunder and outstanding in the hands of the public shall remain undisturbed and unaffected by the plan, with preservation of lien and rights of bondholders as set forth in said mortgage and said bonds. For the $1,762,000 of unpaid accrued interest to January 1, 1944, the holders of the bonds shall receive cash, as hereinafter stated.'

"All provisions of the plan inconsistent with the foregoing correction should be corrected to conform therewith."

The plan provides that the allowance of interest on interest on the C&M bonds should be determined by the court. (R. 128.) On May 11, 1945, the District Court handed down an opinion denying the request for interest upon interest (R. 156-158) and entered its findings, conclusions and decree relative thereto on June 14, 1945. (R. 172-174.) Finding No. 2 was:

"that neither the Choctaw & Memphis Railroad Company mortgage dated January 2, 1899, nor the bonds secured thereby, contain any covenant or other provision for the payment of interest on matured and unpaid installments of interest."

The conclusions were:

"1. The Court has jurisdiction of the subject-matter, of the property upon which said first mortgage of said Choctaw & Memphis Railroad Company and

the bonds secured thereby are a lien, and of the holders of the bonds issued and outstanding under said mortgage.

"2. Said bondholders have no contract right to receive payment of interest on matured and unpaid installments of interest on said bonds, and have no claim in equity thereto by virtue of any facts or circumstances shown by the record in these proceedings."

Respondents appealed from the order of June 14, 1945 to the Circuit Court of Appeals for the Seventh Circuit. (R. 174-175.) Of the contested issues, respondents (appellants below) withdrew all except that one involving the question whether, under the facts of record, the holders of the C&M bonds are entitled in law and in equity to receive interest on interest on matured and unpaid interest coupons from the respective maturity dates thereof to the date of payment. The Circuit Court of Appeals reversed the judgment of the District Court, holding that it was error to refuse to allow and order paid simple interest on the coupons after their respective dates of maturity. The *ratio decidendi* is found in the following statements in the opinion:

"In the reorganization plan, confirmed by the District Court and now in process of consummation, the court directed that the C. & M. bonds should not be affected by the reorganization, a conclusion inspired undoubtedly by the fact that it is undisputed that these bonds are adequately secured and that the annual earnings properly allocable to the division upon which they are a lien exceeds substantially the interest requirements. It follows from the District Court's findings and judgment that the bonds of the C. & M. are no part of the reorganization, in no wise affected by it, and, so far as rights and remedies are concerned, occupy the same position they would have had there been no bankruptcy." (R. 246.)

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"* * * appellants are not a part of the plan and have no part in the reorganization but constitute prior parties in interest who, the court has expressly found, are fully secured, and, therefore, shall not be affected by the plan and whose security shall remain unaffected by it." (R. 252.)

According to respondents' calculations, after giving effect to the $1,762,000 interest payment made in October, 1945, the interest on interest at the rate of 6% per annum, in accordance with Pennsylvania law, amounts to approximately $225 per $1000, or a total of $793,000, as of January 1, 1946 (subject to slight downward revision by reason of the $1,762,000 interest paid in October 1945).

Statute Involved.

The pertinent provisions of Section 77 of the Bankruptcy Act (11 U. S. C. A. Section 205) are reproduced as an appendix, *infra*, page 29.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered June 17, 1946. (R. 253.) The jurisdiction of this court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. §347), and Section 24(c) of the Bankruptcy Act.

Questions Presented.

1. Whether the Choctaw & Memphis bonds are not a part of the plan and have no part in the reorganization and the rights and remedies pertaining thereto occupy the same position as if there were no bankruptcy of Choctaw, Oklahoma and Gulf R. Co., debtor?

2. Whether, if said bonds be a part of the reorganization and within the plan, the holders thereof are entitled under the law applicable to bankruptcy proceedings to an allowance of interest on interest accrued during the period of administration?

3. Whether, if interest on interest is allowable, the rate thereof is governed by the law of Pennsylvania, one of the states where the coupons are optionally payable?

4. Whether such interest on interest, if allowed, constitutes only a general, unsecured claim, where the mortgage does not provide for interest on arrears of interest and in terms secures only the payment of principal and interest thereon?

Reasons Relied on for the Allowance of the Writ.

1. The Circuit Court of Appeals has decided important questions of federal law which have not been but should be settled by this Court, namely:

(a) Where bonds are an obligation, and constitute a lien upon the property, of a debtor in a reorganization proceeding under Section 77, do said bonds cease to be a part of the reorganization and a part of the plan because the plan contains the same provisions for security and payment of principal and interest as are contained in the mortgage?

(b) Where the net earnings of a mortgage division exceed the amount of interest accrued on the mortgage indebtedness for any period during the bankruptcy administration, are the bondholders thereby entitled as of right to be paid such accrued interest on the due date regardless of whether the net earnings of the debtor's entire estate are sufficient for the operating, maintenance and other necessary expenses of the entire estate?

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(c) Is it consistent with the "fair and equitable treatment" required by sub-section (e) of Section 77 for bondholders to be compensated for the delay in payment of their interest installments when other secured creditors with at least equal basis of claim therefor receive no such compensation?

(d) Is it consistent with the provisions of Section 77 to require a claim for interest on interest to be discharged in cash where such interest on interest is not secured by the terms of the mortgage, the effect of such cash payment being to prefer the unsecured claim over secured creditors of the same debtor?

2. The Circuit Court of Appeals has decided a federal question in a way that is probably in conflict with an applicable decision of this court, namely, *Prudence Corporation* v. *Geist*, 316 U. S. 89, 95, which holds that the Bankruptcy Act prescribes its own criteria for distribution to creditors and that federal not local law (Pennsylvania law in the instant case) applies.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and send to this Court for its review and determination, on a date certain to be therein named, a full and complete transcript of the record and the proceedings in the cases numbered and entitled on its docket Nos. 8928 and 8946, Consolidated Appeals, "John C. Traphagen, *et al.*, appellants, *vs.* Joseph B. Fleming and Aaron Colnon, as Trustees of The Chicago, Rock Island and Pacific Railway Company, *et al.*, appellees", to the end that said cases be reviewed and determined by this Court, and that the judgment herein of said Circuit Court of Appeals be re-

versed; and that your petitioners may have such other and further relief in the premises as to this Court may seem proper.

Chicago, Illinois.

Dated August ____, 1946.

Respectfully submitted,

W. F. Peter and
Otis F. Glenn,
Attorneys for Petitioners, Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company,
1025 La Salle Street Station,
Chicago, Illinois.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. .....

JOSEPH B. FLEMING AND AARON COLNON, TRUSTEES OF THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, ET AL.,

Petitioners,

vs.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON AND CHARLES G. WOODWARD, CONSTITUTING THE PROTECTIVE COMMITTEE FOR HOLDERS OF CHOCTAW AND MEMPHIS RAILROAD COMPANY FIRST MORTGAGE 5% GOLD BONDS, DUE JANUARY 1, 1949,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the Circuit Court of Appeals (R. 245) is reported in 155 Fed. (2) 889. The opinion of the District Court (R. 156-158) is not reported.

Jurisdiction.

A statement of the jurisdiction is given in the petition (p. 7), and, to avoid duplication, is not repeated here.

Statement of the Case.

A statement of the case is set forth in the petition under the heading "Summary Statement of the Matter Involved" and, to avoid duplication, is not repeated.

Specification of Errors.

The Circuit Court of Appeals erred

1. In holding that the Choctaw & Memphis bonds are not a part of the plan and have no part in the reorganization and that the rights and remedies of the bondholders occupy the same position they would have if there had been no bankruptcy proceeding.

2. In holding that the holders of Choctaw & Memphis bonds are entitled to an allowance of interest on interest accrued on their bonds during the period of bankruptcy administration because the net earnings of their mortgage division exceeded the interest requirements, but without regard to whether the net earnings of the debtor's entire estate are sufficient to pay such interest as and when it becomes due consistently with the funds needed for working capital, operation, maintenance, etc., of the debtor's entire estate.

3. In holding that the allowance of interest on interest and the rate thereof are governed by the local law of the State of Pennsylvania, wherein the coupons are optionally payable.

4. In holding that the claim of the Choctaw & Memphis bondholders for interest on interest should be paid in cash instead of holding that such claim is only a general unsecured claim against the debtor's estate.

SUMMARY OF ARGUMENT.

I.

The opinion of the Circuit Court of Appeals proceeds upon the theory that by virtue of the findings and judgment of the District Court, the Choctaw & Memphis bonds are not a part of the reorganization or a part of the plan and therefore their rights and remedies occupy the same position as if there had been no bankruptcy, *i. e.*, their rights are the same as would obtain between a solvent debtor and his creditor. This theory is erroneous.

The railroad upon which the C&M bonds are a lien remains in the jurisdiction of the District Court as part of the estate of the CO&G and it is being operated by the Trustees under control of the court. Under Section 77, the rights of creditors and the satisfaction of their claims must be worked out through the medium of a plan of reorganization; it is a legal impossibility for the C&M bondholders to have any status as such outside of the reorganization proceeding or to receive anything of value on account of their bonds except under a plan. The fact that the plan, as corrected, gives them the same treatment as does the mortgage, simply means that the plan adopts the mortgage provisions; but what the bondholders receive is pursuant to the plan and not the mortgage.

The Court of Appeals misconceived the intent and purpose of the provisions of the plan as corrected by the District Court. When the District Judge corrected the plan so as to leave the Choctaw & Memphis bonds undisturbed, not affected by the plan in any way (R. 165), he was using the words "not affected" in the technical sense

of that expression as contained in sub-section (e) of Section 77 which provides that the plan need not be submitted to any class of creditors in the event of a finding that such class will not be adversely and materially affected by the plan. That a class of creditors may not be affected by the plan does not mean that they are not a part of the plan or are out of the reorganization proceeding.

II.

Respondents' demand assumes that the net earnings of the C&M mortgage division were at all times in excess of annual interest requirements. The only evidence of net earnings is the figures obtained by applying the court-approved formula to the operations of the several mortgage divisions of the system for the years 1936 and 1937. The purpose of this formula was to ascertain *relative* earning power as a basis for allocating to the several classes of creditors the aggregate amount of new securities to be issued under the plan. The earnings of any mortgage division for any prior or subsequent year were never determined; and hence it cannot be known whether the C&M mortgage division produced net earnings, outside of the test period, sufficient to meet interest requirements. Even for the test period, the average net annual earnings of the CO&G estate were such that had the C&M bond interest been paid, only $85,594 would have been left, an amount inadequate for the needs of a 1000-mile railroad.

Respondents claim interest on interest as "compensation for the delay in payment of their interest". But pending the preparation and certification of a reorganization plan, no one could foretell what treatment would be provided for the C&M bonds; payment of interest in the interim might prove to be inconsistent with the plan when pro-

mulgated; the non-payment was a necessary feature of the reorganization process. The fact that the later war earnings of the Trustees made it possible to pay the entire arrears of C&M bond interest does not create a constructive and retroactive obligation to make payment of the interest on the maturity dates in the prior years. The Trustees having been under no obligation to pay the interest as it matured, they are under no obligation to compensate the bondholders for such non-payment.

The alleged principle that interest, if wholly earned, must be paid when due would be equally applicable to a payment *pro tanto*, to bondholders whose interest is partially earned. The result of all such compelled payments would be to deplete Trustees' cash to an extent that might impair their ability to carry on operations.

III.

The Bankruptcy Act prescribes its own criteria for distribution to creditors; the federal, not local, law applies. The Court below, in holding that the right of the bondholders to receive interest on the coupons after their maturity is determined by the law of the State of Pennsylvania wherein the coupons are optionally payable, was following its theory that the bonds are not a part of the reorganization and not a part of the plan. As shown under Point I, this theory is erroneous. Under the federal law of bankruptcy which governs, the bondholders are not entitled to interest on interest.

IV.

The C&M Mortgage secures only the principal and simple interest on the bonds. The Sequestration Order of the District Court (R. 20) does not extend the scope of the lien given by the mortgage. The right to interest on interest, if such right exists, is not a secured claim, and if that claim were to be recognized at all, it would constitute only a general claim against the Chicago, Oklahoma and Gulf estate.

ARGUMENT.

I.

The Choctaw & Memphis Bonds Are Still a Part of the Plan and of the Reorganization Proceedings.

The plan which the Commission certified to the District Court altered the C&M mortgage and bonds in two particulars:

(1) The maturity date was extended for 20 years.

(2) The interest rate was reduced from 5% to 4%.

The court corrected the plan by striking out these alterations and providing in lieu that the bondholders should receive their principal on January 1, 1949 with interest at 5% per annum. The fact that the rights thus provided for the bondholders were coincident with their contract rights under the mortgage does not mean that the plan ceased to operate on them. Their right to receive principal and interest springs from the plan and not the mortgage; the debtor is incapable of performing the mortgage contract. The obligation of the reorganized company to pay the principal and interest on the C&M bonds will arise by virtue of the final decree in the proceeding pursuant to subsection (f) of Section 77, which provides that the property transferred and conveyed to the debtor or to the corporation provided for by the plan "shall be free and clear of all claims of the debtor, its stockholders and *creditors*, and *the debtor shall be discharged from its debts and liabilities*, except such as may consistently *with the provisions of the plan* be reserved in the order confirming the plan or directing such transfer and conveyance," etc. Thus the reorganized company will acquire

the C&M mortgage division free and clear of all claims of creditors except those imposed upon it by the provisions of the plan; the debtor, the CO&G, will be discharged from its debts and liabilities. The reorganized company is not required to assume the C&M bonds. In order to receive their interest to, and their principal on, January 1, 1949, the C&M bonds must be within the plan.

As corrected by the court, the plan reads:

> "The Choctaw & Memphis Railroad Company first mortgage dated January 2, 1899, and the $3,524,000 of 5 per cent bonds issued thereunder and outstanding in the hands of the public shall remain undisturbed and unaffected by the plan, with preservation of lien and rights of bondholders as set forth in said mortgage and said bonds. For the $1,762,000 of unpaid accrued interest to January 1, 1944, the holders of the bonds shall receive cash, as hereinafter stated." (R. 194.)

This substitution could not have put the C&M bonds out of the plan; the very $1,762,000 of back interest which the bondholders later received in October, 1945, was paid pursuant to the foregoing provision.

It would be anomalous to hold that any alteration, however slight, in the contract rights of a creditor leaves him within the plan, but that if no alteration is made, he is, *ipso facto*, without the ambit of the plan. Whatever the creditor receives, whether the equivalent of his contract rights or otherwise, is received by virtue of the plan itself and not the contract.

Section 77(b) provides:

> "The term 'creditors' shall include, for all purposes of this section, all holders of claims of whatever character against the debtor or its property, * * * The term 'claims' includes debts whether liquidated or unliquidated * * * liens, or other interests of whatever character."

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Subsection (c) (7) provides:

> "The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown * * *"

The legislative intent of the foregoing is plain; the rights of the creditors and the satisfaction of their claims are to be worked out through the medium of a plan of reorganization.

The Choctaw & Memphis mortgage division is still in the custody of the District Court; the Trustees have the legal title thereto, and are carrying on the business of the debtor under the control of the court. This state of affairs will continue until the reorganization proceeding terminates. In its order of June 14, 1945, the District Court properly concluded that it had jurisdiction of the property upon which the C&M mortgage and bonds are a lien "and of the holders of the bonds secured and outstanding under said mortgage". (R. 173.)

The Circuit Court of Appeals has misinterpreted the purpose and effect of the correction made by the District Court in the plan. When the District Judge stated in his opinion (R. 165)

> "In other words, the Choctaw & Memphis bondholders would benefit to a greater degree under the plan than if their legal rights remained unaffected,"

he meant "under the plan" of the Commission. The antithesis is between the Commission's plan and the plan as corrected by the court. And when the judge said (R. 165)

> "The court concludes that the proper solution is to leave the Choctaw & Memphis bonds undisturbed, not affected by the plan in any way",

he was using the words "not affected" as they are found

and used in Section 77(e) and in compliance with its requirements:

> "*Provided Further,* That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, * * *"

For the same reason and purpose, the court made the following conclusion in its order of June 15, 1945 approving the plan (R. 196):

> "3. The interests of the holders of the Choctaw & Memphis Railroad Company First Mortgage Bonds will not be affected by the plan, as corrected. If the Commission finds that the interests of such class of creditors will not be adversely and materially affected by the plan, submission to such class shall not be necessary."

If any creditor is "not materially affected" by a plan, it is because the plan substantially recognizes his contract rights without alteration. But Congress did not provide that such creditor was thereby excluded from the plan, but simply that he might be excluded from voting on it.

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II.

An Allowance of Interest on Interest Accrued During the Period of the Bankruptcy Administration Is Inconsistent With the Provisions and Intent of Section 77. That the Net Earnings of the C&M Mortgage Division Exceeded Interest Requirements Does Not Justify Such Allowance; the Net Earnings of the Entire Estate and Their Adequacy to Provide the Necessary Funds for Proper Operation and Maintenance of the Debtor's Railroad Must Be Considered.

Respondents' demand is fundamentally based on their claim that the net earnings of the C&M mortgage division as revealed by the formula* were in excess of the annual interest requirements on the bonds.

The purpose of a formula, as disclosed by subsection (c), par. (10) under the authority of which it was established and applied, is to ascertain the relative earning power and the values resulting therefrom of the several mortgage divisions. Here, the formula was required to be applied for only two years, 1936 and 1937; these constituted a test period. The Commission used the formula results as the basis of its allocations of certain of the new securities provided for in the plan; 252 I. C. C. 483, 484. The formula was applied to the operations of all of the mortgage divisions of the Rock Island system for the test period. Whether the earnings of the system as a whole for 1936 and 1937 were higher or lower than those of prior or later years was not material; the *relative* earnings of the mortgage divisions were revealed and the premise was that

* The formula for segregation of earnings of August 16, 1934 (R. 30-31) was never approved by the court. The only formula ever so approved was that of June 4, 1937 (R. 49-51) and later modified. (R. 56-57.) See 50 Fed. Supp. 844-845.

this relationship would be more or less constant from year to year. All that the record shows then is that the Choctaw & Memphis mortgage division had average annual net earnings, as adjusted, for the test period of $425,093, being $248,893 in excess of annual interest requirements. What its net earnings were for any other period during bankruptcy administration is unknown.

In their brief below, respondents characterized their claim for interest on interest as "compensation for the delay in payment of their interest installments". The delay in payment did not destroy the right to the interest; each six months' accrual increased the amount of the claim. But the right to be *paid* interest on the due date is another matter; the covenant to pay was the debtor's, not the Trustees'. The Trustees committed no breach of covenant in not paying the coupons at maturity. No plan of reorganization was certified to the court until August, 1941; until then, no one could foresee what treatment would be therein provided for the C&M bonds; they might receive new securities in whole or partial satisfaction of their aggregate claim for principal and accrued interest, or the bonds might be extended and the accrued interest satisfied in new securities (as was provided in the original plan) or in cash (as in the modified plan). Absent the right of receiving, and the Trustees' correlative duty of paying, interest on the due dates, there is no basis for claiming compensation for delay. The fact is that the delay was a necessary ingredient of the reorganization process.

Furthermore, the unexpressed premise behind the claim for interest on interest, *i.e.*, that funds for paying the several coupons as they matured were available from the net earnings of the C&M mortgage division, is not supported by any evidence. The 2 year test period results

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are adequate for the determination of relative values and allocation of new securities; they are insufficient to base a demand for actual cash payment of interest on each six months' maturity date during a 10-year period. And even for the test period, the average annual earnings of the CO&G estate as an entirety were only $259,794. Payment of C&M bond interest would have left only $83,594 as working capital of a 1000-mile railroad—plainly inadequate.

The large earnings of the war years made it possible for the Commission to provide in its modified plan of May 1, 1944 for a cash distribution among the various classes of creditors of $34,279,750 (R. 221) which included the $1,762,000 for all arrears of interest on the C&M bonds to January 1, 1944, the plan's effective date. But we submit that the Trustees' financial ability to pay *nunc pro tunc* does not operate retroactively to create a constructive obligation to make the payment on the maturity dates in the prior years, and to create a corresponding obligation to compensate the bondholders for that constructive failure.

The table appearing in 257 I.C.C. p. 290 gives the amount of accrued and unpaid interest on the various classes of bonds as of January 1, 1944. The table in 252 I.C.C. pp. 488-489, shows that during the test period other mortgage divisions earned their interest in part. Certainly, if C&M bondholders had the right to immediate payment of all their interest because all was earned, by parity of reasoning other bondholders whose interest was earned in part became entitled to immediate payment *pro tanto*. For surely the alleged right to immediate payment is not an "all or nothing" right. Surely a bondholder whose mortgage division earned only 90% of interest requirements should not go empty handed, while another creditor gets paid because his mortgage division made the full 100%. But if the right to immediate payment must be

thus generally recognized and payment made accordingly, the inevitable result is that the estates would be so stripped of cash as to seriously impair the Trustees' ability to carry on operations and give adequate common carrier service.

In this connection, it is necessary to revert to the theory of the Circuit Court of Appeals that the C&M bondholders are not a part of the plan and have no part in the reorganization as a result of the corrections made to the plan by the District Judge. Even on that theory, the bondholders' status *de hors* the plan cannot be related back *ab initio*. They were certainly in the reorganization and within the plan until the correction was made; and while they were in the reorganization, they were subject to the applicable provisions of the Bankruptcy Act. The Court fell into error in holding that as a result of the findings and judgment of the District Court, the rights and remedies of the C&M bondholders "occupy the same position they would have had there been no bankruptcy." But there *was* a bankruptcy and the C&M bondholders were a part of it for at least 12 years, during which their rights were governed by Section 77. None of those rights was violated, and there can be no retroactive violation, by reason of their escape (if such be the case), entitling them to "compensation".

III.

The Rights of Choctaw & Memphis Bondholders Are Governed by the Federal Law, Namely, the Law Relating to Bankruptcy. Under That Law, the Bonds Are Not Entitled to Interest on Interest.

In their brief in the court below, respondents stated:

> "Since the proceeding below is based upon the bankruptcy law, the federal rule as to interest payment should apply. This would seem to be indicated by

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Prudence Corp. v. *Geist*, 316 U. S. 89 (1942), where the court, reviewing a proceeding under the Bankruptcy Act, rejected a rule of law which had been enunciated by the New York Court of Appeals in a state liquidation proceeding, precluding a holder of certain guaranteed certificates, who is also guarantor thereon, from participating in distributions until the other certificate holders were paid in full. The Supreme Court said (p. 95):

> 'Nothing decided in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, requires a court of bankruptcy to apply such a local rule governing the liquidation of insolvent estates. The bankruptcy act prescribes its own criteria for distribution to creditors. In the interpretation and application of federal statutes, federal not local law applies.' "

To show what respondents claim to be the applicable federal rule of law, they cited various decisions of this and other Federal courts that holders of interest coupons are entitled to receive interest thereon from their dates of maturity. But none of these cases involved bankruptcy, and the decisions do not purport to state the law applicable to bankruptcy proceedings. They involve solvent obligors whose failure to pay the interest arose from unwillingness and not inability to pay.

The Circuit Court of Appeals did not decide whether the principle of those cases was applicable in bankruptcy proceedings. Instead, the court said:

> "We believe, however, that federal decisions are of no binding effect here, but rather that under the doctrine of *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, where the bankruptcy court is charged with the duty of protecting a lien unaffected by bankruptcy, the law of the state of performance must control. • • • when it [the bankruptcy court] deals with the right of a citizen to enforce a lien under the state law, unaffected by bankruptcy • • • it must grant relief demanded by the laws of the state." (R. 251.)

In so stating, the court was following its theory that the Choctaw & Memphis bonds are not a part of the plan and have no part in the reorganization. Thus freeing itself from any considerations of federal law, the court held that "as determined by the State of Pennsylvania, the holders are entitled to simple interest on coupons after their maturity". If, as we contend and have shown under Point I, the Court's theory of "unaffected by bankruptcy" is erroneous, its conclusion that the law of Pennsylvania governs fails.

The holding of this Court in the *Prudence Corporation* case that *Erie R. Co.* v. *Tompkins* does not require a court of bankruptcy to apply local rules of law governing the liquidation of insolvent estates, has not been changed.

It should be noted that the C&M mortgage contains no covenant to pay interest on delayed or defaulted primary interest.* Therefore, the bondholders' claim is not based on contract. If valid, it must be based upon some general principle of law applicable in a bankruptcy proceeding. Respondents have cited no such case, and their failure to do so is good evidence that none exists.

Far from sanctioning interest on interest, the *general* rule under the Bankruptcy Act is that *no* interest is payable which accrues after the date of the filing of the petition in bankruptcy (Bankruptcy Act, 63a(1)).

One exception to this rule is that on a secured creditor's claim, simple interest accrues if the security is sufficient. (*Coder* v. *Arts*, 213 U. S. 223, 245.) The C&M bondholders have been given the benefit of this exception.

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* The mortgage affirmatively shows that it was not intended that interest on interest should be paid. The relevant clauses of the mortgage are set forth in Appendix hereto, p. 32.

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IV.

In Terms, the C&M Mortgage Secures Only the Principal of the Bonds and Simple Interest Thereon. Therefore, Interest on Interest Would Constitute at Most a General Unsecured Claim in Bankruptcy.

As shown by the relevant excerpts therefrom which are set forth in the Appendix, p. 32, the Choctaw & Memphis Mortgage specifically provides that it is given to secure only the principal and simple interest of the bonds. The Mortgage Trustee is given the right, upon entry into possession of the mortgaged property in the event of default in payment of interest, to apply the net income "to the payment of the interest in arrears" (R. 75), and in the event of sale to receive from the proceeds only the principal and simple interest, with the duty to pay over any surplus proceeds of sale to the mortgagor. (R. 78-79.)

The Sequestration Order (R. 20) excused all Mortgage Trustees from making any further demand or application for the enforcement of any lien or right in respect of earnings of the several mortgaged properties (R. 20-21) and provided that the rights of each Mortgage Trustee should be determined as if due demand or application had been made, etc. But the order further provided:

> "but nothing in this order shall be construed * * * as requiring the [bankruptcy] Trustees to pay over or earmark any of the same pending the further order of the Court." (R. 22.)

But in recognizing liens, the Sequestration Order does not purport to go further than the mortgage itself. Where the mortgage does not give a lien for interest on interest, the Sequestration Order does not.

It follows that if any penalty is to be exacted for non-

payment of the interest as it became due, the amount of the penalty is not secured by the mortgage which, by its express terms, states that it is given to secure only principal and simple interest. At most, therefore, such a penalty would be a contract implied in law representing only a general, unsecured claim against the Choctaw, Oklahoma and Gulf estate.

We submit that the C&M bonds are not entitled to any claim for interest on interest for the reasons heretofore given. But if that claim were to be recognized at all, it would constitute only a general, unsecured claim against the Choctaw, Oklahoma and Gulf estate.

Conclusion.

Petitioners respectfully submit that the decision of the Circuit Court of Appeals for the Seventh Circuit is erroneous; that the questions involved are of general importance in the administration of the Bankruptcy Act, and that it is in the public interest to have those questions determined by this Court.

August 31, 1946.

Respectfully submitted,

W. F. Peter and
Otis F. Glenn,
Attorneys for Petitioners, Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company,
1025 La Salle Street Station,
Chicago, Illinois.

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APPENDIX.

The Bankruptcy Act, as Amended.

SEC. 77. REORGANIZATION OF RAILROADS ENGAGED IN INTERSTATE COMMERCE.—(a) Any railroad corporation may file a petition stating that it is insolvent or unable to meet its debts as they mature and that it desires to effect a plan of reorganization. * * * Any railroad corporation the majority of the capital stock of which having power to vote for the election of directors is owned, either directly or indirectly through an intervening medium, by any railroad corporation filing a petition as a debtor may file, with the court in which such other debtor has filed such a petition, and in the same proceeding, a petition, a copy of which shall also be filed at the same time with the Commission, stating that it is insolvent or unable to meet its debts as they mature, and that it desires to effect a reorganization in connection with, or as a part of the plan of reorganization of such other debtor; * * *

(b) A plan of reorganization within the meaning of this Section (1) shall include provisions modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured, either through the issuance of new securities of any character or otherwise; (2) may include provisions modifying or altering the rights of stockholders generally, or of any class of them, either through the issuance of new securities of any character, or otherwise; (3) may include, for the purpose of preserving such interests of creditors and stockholders as are not otherwise provided for, provisions for the issuance to any such creditor or stockholder of options or warrants to receive, or to subscribe for, securities of the reorganized company in such amounts and upon such terms and conditions as may be set forth in the plan; (4) shall provide for fixed charges (including fixed interest on funded debt, interest on unfunded debt, amortization of discount on funded debt, and rent for leased railroads) in such an

amount that, after due consideration of the probable prospective earnings of the property in light of its earnings experience and all other relevant facts, there shall be adequate coverage of such fixed charges by the probable earnings available for the payment thereof; (5) shall provide adequate means for the execution of the plan, which may include the transfer of any interest in or control of all or any part of the property of the debtor to another corporation or corporations, the merger or consolidation of the debtor with another corporation or corporations, the retention of all or any part of the property by the debtor, the sale of all or any part of the property of the debtor either subject to or free from any lien at not less than a fair upset price, the distribution of all or any assets, or the proceeds derived from the sale thereof, among those having an interest therein, the satisfaction or modification of any liens, indentures, or other similar interest, the curing or waiver of defaults, the extension of maturity dates of outstanding securities, the reduction in principal and/or rate of interest and alteration of other terms of such securities, the amendment of the charter of the debtor, and/or the issuance of securities of either the debtor or any such other corporation or corporations for cash, or in exchange for existing securities, or in satisfaction of claims or rights or for other appropriate purposes; and may deal with all or any part of the property of the debtor; may reject contracts of the debtor which are executory in whole or in part, including unexpired leases; and may include any other appropriate provisions not inconsistent with this section. * * *

* * * The term "creditors" shall include, for all purposes of this section all holders of claims of whatever character against the debtor or its property, whether or not such claims would otherwise constitute provable claims under this Act, including the holder of a claim under a contract executory in whole or in part including an unexpired lease.

The term "claims" includes debts, whether liquidated or unliquidated, securities (other than stock and option warrants to subscribe to stock), liens, or other interests of whatever character. * * *

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(c)(7) The judge shall promptly determine and fix a reasonable time within which the claims of creditors may be filed or evidenced and after which no claim not so filed or evidenced may participate except on order for cause shown, the manner in which such claims may be filed or evidenced and allowed, * * *

(c)(10) The judge may direct the debtor or the trustee or trustees to keep such records and accounts, in addition to the accounts prescribed by the Commission, as will permit of such a segregation and allocation, as the necessities of the case may require, of the earnings and expenses between and to the divisions and parts of the railroad or other property of the debtor which are separately subject to the liens of the various mortgages or deeds of trust, or are separately subject to lease, and may refer to the Commission for its recommendations after hearings thereon if the parties shall so request and/or the Commission determine necessary or desirable, as to the method or formula by which such segregation and allocation shall be made; and thereafter such segregation and allocation may be made at the expense of the debtor's estate.

(e) * * * The plan shall then be submitted by the Commission to the creditors of each class whose claims have been filed and allowed in accordance with the requirements of subsection (c) hereof, and to the stockholders of each class, and/or to the committees or other representatives thereof, for acceptance or rejection, within such times as the Commission shall specify, together with the report or reports of the Commission thereon or such a summarization thereof as the Commission may approve, and the opinion and order of the judge: *Provided,* That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, * * * (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, * * *: *Provided further,* That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by

the plan, or that at the time of the finding the interests of such class of creditors have no value, or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests.

(f) * * * Upon confirmation of the plan, the debtor and any other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and the control of the judge, the laws of any State or the decision or order of any State authority to the contrary notwithstanding. The property dealt with by the plan, when transferred and conveyed to the debtor or to the other corporation or corporations provided for by the plan, or when retained by the debtor pursuant to the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, and the debtor shall be discharged from its debts and liabilities, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the judge may require the trustee or trustees appointed hereunder, the debtor, any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may require the debtor to join in any such transfer or conveyance made by the trustee or trustees. * * *"

Choctaw & Memphis Mortgage.

The granting clause of the Mortgage states that it is given (R. 66):

> "for the purpose of securing the payment of the principal and interest of the said bonds when and as the same shall become due and payable according to the tenor and effect of the said bonds so to be made and executed, from time to time, for a sum not exceeding in the aggregate three million seven hundred and fifty thousand dollars, together with the interest that will

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accrue thereon (both the said principal and interest being payable in gold), and taxes upon the said principal and interest of said bonds".

The mortgage recites that the property is transferred to the Trustee

> "for the purpose of securing the payment of the principal and interest of the said bonds when and as the same shall become due and payable according to the tenor and effect of the said bonds." (R. 65.)

Then the mortgage authorizes the Trustee to enter into possession of the property in case of default in the payment of interest for three months and directs the Trustee to apply any net income

> "to the payment of the interest in arrears (if any), or which shall after such entry become due and payable on the bonds outstanding and secured hereby, in the order in which such interest shall become due." (R. 75.)

The mortgage provides (R. 77) that the Trustee may sell so much of the property as may

> "be sufficient to pay the amount due on such bonds then outstanding, for principal and interest, according to the terms thereof"

and then provides (R. 78-9) that the proceeds of the sale shall be applied

> "to the payment of the principal of such of said bonds as may be at that time outstanding, *and of the interest which shall have accrued upon the said principal up to that time, according to the tenor thereof,* without discrimination or preference as between principal and interest, but ratably to the aggregate amount of such principal and accrued interest; it being understood and hereby declared and agreed that such payment shall be made to the persons holding the bonds and coupons evidencing the right to such principal and interest, without discrimination or preference between them, *and if, after payment in full of all the said bonds, principal and interest, a surplus of the*

said proceeds of sale shall remain, the said Trustee shall pay over such surplus to the said company, its successors or assigns, or as any court of competent jurisdiction shall lawfully direct." [Italics inserted.]

Also the Trustee is authorized by the mortgage to bid on behalf of the holders of the Bonds only the amount due in accordance with the tenor thereof. That provision is as follows (R. 80):

"the Trustee under these presents for the time being may, in its discretion, and not otherwise, bid for, and if the same be obtainable at the price hereafter mentioned, purchase and acquire the property so offered for sale, in behalf of all the holders of bonds secured by this instrument, which shall then be outstanding, in proportion to the amount of said bonds, and of the overdue coupons thereunto belonging, by them respectively held: PROVIDED, HOWEVER, That nothing herein contained shall authorize the said Trustee to bid, on behalf of the holders of said bonds and coupons, *a sum exceeding the whole amount of said bonds then outstanding, with the interest thereon, according to the tenor thereof,* and the costs and expenses of such sale for the entire property then held upon the trusts of this indenture, or any amount reasonably proportionate thereto, for any part of the said property.

"And it is further agreed that the mortgage bonds and overdue coupons aforesaid shall be received in payment of the purchase money or any property sold by virtue hereof, as equivalent to so much in cash of the said purchase money as would be distributable and payable thereon." [Italics inserted.]

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Petitioners,

vs.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON AND CHARLES G. WOODWARD, CONSTITUTING THE PROTECTIVE COMMITTEE FOR HOLDERS OF CHOCTAW AND MEMPHIS RAILROAD COMPANY FIRST MORTGAGE 5% GOLD BONDS, DUE JANUARY 1, 1949,

Respondents.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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THE DONNELLEY-WARREN PRINTING COMPANY, 350 WEST JACKSON, CHICAGO

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Respondents.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Petitioners seek a review by this Court of the judgment below on the ground that there are special and important reasons therefor. It is not merely that $790,000 of trust estate money is involved; it is of grave concern to present and future administration by District Courts and their trustees that the fundamental questions be authoritatively settled. Whether or not the trustees are bound to pay interest coupons at each maturity whenever the mortgage division produces sufficient net income therefor, is a question that materially affects every financial aspect of trus-

tees' administration, *e. g.*, a budget of expenditures for additions and betterments, purchases of needed equipment, rehabilitation program, supply of working capital, etc. If such interest must be paid, obviously the money cannot be used for other purposes however necessary or desirable, whether for the particular mortgage division or the debtor's estate as a whole. It is not a sufficient reply that the interest payment might be deferred with compensation to the bondholders in the form of interest on the delayed interest payment; accumulation of interest on interest simply creates an additional financial burden and problem.

Respondents' claim is founded on the simple fact (as asserted by them) that the C&M mortgage division's earnings exceeded interest requirements. They point to their mortgage division income of $450,882 in 1936 and $399,304 for 1937, "as contrasted with annual interest requirements on the C&M bonds of $176,200." (Brief, p. 5.) Elsewhere they speak of income "in excess of the amounts required for the interest on the bonds during the reorganization proceeding" (p. 2); "earnings available for interest." (pp. 5-11.) Respondents' test of availability is a mere arithmetical excess of mortgage division earnings over interest requirements. They completely ignore that the average annual earnings for 1936 and 1937 of the CO&G estate as a whole were only $259,794, leaving only $83,594 as working capital after a payment of interest. They ignore that the primary obligation of the Trustees is to operate the railroad (*i.e.*, the entire railroad and not merely a mortgage-division) and to give adequate service to the public as a common carrier. They ignore the fact that a Section 77 reorganization proceeding has for its essential purpose a suspension of the rights of creditors pending the preparation and consummation of a plan which shall afford due recognition of those rights.

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Whether there be such an absolute legal duty on the Trustees as claimed by respondents, either to pay interest if earned or to pay compensation if payment be delayed, is a matter upon which the District Courts and their trustees should be informed. No interest upon interest allowance has been made thus far in any plan of reorganization promulgated by the Interstate Commerce Commission, or in any plan confirmed by a District Court.

Respondents assert (Brief, p. 2) that petitioners "have obscured the narrow issue and simulated others". In reality, what we have tried to show is that the issue is not so narrow as respondents make out; that it involves incidences and corollaries. As for the "simulated" issues, we shall show in the succeeding discussion that they are both genuine and germane.

Respondents' Point I.

The opinion of the Circuit Court of Appeals is bottomed squarely on the premise that the bonds of the C&M are no part of the reorganization, in no wise affected by it, and occupy the same position as though there had been no bankruptcy. (R. 246.) All arguments of petitioners and other appellees in the domain of bankruptcy law were rejected. For example, the Court said of their argument that payment of interest on interest was unfair and discriminatory to other creditors that "The fallacy of this reasoning lies in the fact that appellants are not a part of the plan and have no part in the reorganization," etc. (R. 252.)

The inescapable inference from the Court's opinion is that if the C&M bonds did have a part in the reorganization and were a part of the plan, they would be entitled to no interest on interest. Otherwise, the Court was wasting its time in making the distinction.

Now come respondents and say that whether or not the bonds are a part of the plan and of the reorganization proceeding has no bearing upon the right of the bondholders to recover interest on interest. In other words, the Court's ground for allowing interest on interest is no ground at all. The Court engaged in an unnecessary and futile inquiry.

Respondents' position on this point relieves the necessity for further discussion.

Respondents' Point II.

Respondents contend (Brief, p. 8) that if the rights of the C&M bondholders emanate from the plan, as contended by petitioners, then *Prudence Corp.* v. *Geist*, 316 U. S. 89, is applicable. What this Court said in *Prudence Corp.* v. *Geist* was

> "Nothing decided in *Erie R. Co.* v. *Tompkins*, 304 U. S. 64, requires a court of bankruptcy to apply such a local rule governing the liquidation of insolvent estates. The bankruptcy act prescribes its own criteria for distribution to creditors. In the interpretation and application of federal statutes, federal not local law applies."

The applicable "federal" law is the bankruptcy act and the decisions thereunder. That is the law which the Appellate Court should have applied—not the federal law as found in decisions which do not in anywise involve the law of bankruptcy. Yet, it is only non-bankruptcy cases which respondents have assembled as authorities for the proposition that interest coupons draw interest from their dates of maturity. (Brief, p. 9.) We pointed out the non-bankruptcy character of these cases in our previous brief. (p. 25.) Respondents' answer is that petitioners "cannot cite any cases involving bankruptcy proceedings which change the law or which disclose law in favor of

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their contentions." But the burden is upon respondents to establish their case in law as well as in fact. That petitioners are unable to cite a case wherein a bankruptcy court has disallowed (or allowed) interest on interest as a matter of right, indicates merely that no such claim has ever been previously made.

Respondents assume that the law declared in the non-bankruptcy cases carries over without change into bankruptcy proceedings. But it is the very essence of those decisions that they dealt with solvent obligors; solvency, *i.e.*, ability to pay the coupons when due, is the common denominator of them all. Bankruptcy is the haven of the insolvent obligor. Section 77 is denominated a statute "for the relief of debtors." In *Continental Ill. National Bank* v. *CRI&P*, 294 U. S. 648, this Court referred to the fact that the subject of bankruptcy is nothing less than

> "the subject of the relations between an insolvent or non-paying or fraudulent debtor, and his creditors, extending to his and their relief."

What relief is it for the insolvent debtor to be held to the same standard as is the solvent debtor, particularly as respects discharge of the debtor's liabilities accruing during bankruptcy administration? The touch of bankruptcy necessarily changes the color of the legal litmus paper.

Respondents say (Brief, p. 10):

> "The decisions are that bankruptcy does not affect the enforceability of a claim for interest if the assets on which the claim is a first lien are adequate to pay interest."

Since interest itself has been discharged by payment in full, this statement is irrelevant. Equally irrelevant is respondents' stress upon "their perfected lien on earnings". (pp. 2, 11.) As events turned out, the C&M bondholders did not need the benefit of their lien on earnings; the $1,752,000 of accumulated interest was paid to them by order of court as a *pro tanto* consummation of the plan.

Upon such payment, the lien expired. But even while it existed, the lien did not extend to interest on defaulted interest because there was no mortgage contract therefor. Assuming *arguendo* that the lien protected the right to receive payment of the coupons on the due dates, its enforcement was suspended by virtue of the bankruptcy proceeding. The bondholders' right to receive payment on the day was against the debtor, all of whose obligations, including this one, were undergoing the reorganization process. The Sequestration Order specifically provided that nothing therein should be construed "as requiring the Trustees to pay over or earmark" any tolls, earnings, income, etc., pending the further order of the court.

On page 11 of their brief, respondents say that petitioners "assert that by its terms the C&M INDENTURE 'affirmatively' shows * * * that the claim for interest on overdue interest is 'expressly given up.'" The phrase "expressly given up" is nowhere to be found in petitioners' brief. Our assertion is that the lack of intent to require payment of interest on overdue coupons is affirmatively evidenced by the provisions of the mortgage whereby in the event of default giving rise to right of entry into possession by the Mortgage Trustee, the net income is to be applied "to the payment of interest in arrears" (R. 75) and if there be a foreclosure sale, every dollar in excess of principal and simple interest will belong to the mortgagor. (R. 78, 79.)

In response to petitioners' contention that since the C&M mortgage secures only the principal of the bonds and simple interest thereon, interest on interest would constitute at most a general claim in bankruptcy, respondents say (Brief, pp. 11-12):

> "The draftsman of the C&M INDENTURE obviously did not have in mind any situation in which the interest on the C&M Bonds would remain in default for

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almost twelve years despite the fact that earnings of the mortgage property were adequate to pay the interest. It is absurd to impute to the draftsman of the mortgage an intent to give up interest on the overdue coupons in the situation here presented."

We cannot read the mind of the draftsman who prepared the C&M Mortgage and cannot say why he omitted the provision not uncommonly contained in railroad mortgages that interest in default should bear interest until paid. But we do know that the draftsman had in mind the subject of default in interest because he provided specific remedies therefor. See Articles Seventh and Eighth of the Mortgage. (R. p. 74-77.)

Finally, respondents say (Brief, p. 12) that petitioners for the first time seek in their brief to raise the question of whether the earnings of the mortgaged property were adequate to cover the bond interest requirements. Respondents rely solely upon the statement of the Interstate Commerce Commission that

> "The Choctaw & Memphis is a leased line, and the record establishes the fact that its earnings are substantially in excess of its bond interest requirements."

This statement is contained in the Commission's Supplemental Report of July 31, 1941, under the heading, "Petition of the Choctaw committee". (R. 127-130.) As will appear from an examination of the entire text, the subject under discussion is what the plan should provide for the C&M bonds; the various contentions and arguments of the committee are examined and the Commission's conclusions stated. The context in which the above-quoted language appears shows clearly the meaning and purpose of that language:

> "There are outstanding $3,524,000 of Choctaw & Memphis first-mortgage 5-percent bonds with unpaid accrued interest thereon to January 1, 1942, of $1,409,600. The Choctaw & Memphis is a leased line, and

the record establishes the fact that its earnings are substantially in excess of its bond interest requirements. Upon a review of the record we conclude that the lien of these bonds should be preserved and that the Choctaw & Memphis first-mortgage, dated January 2, 1899, amended to extend the maturity date of the bonds to January 1, 1969, and reducing the bond-interest rate to 4% per annum, should be assumed by the reorganized company, and the property conveyed to that company." (R. 128.)

The "record" which established what the C&M mortgage division earnings were, was the formula results for 1936 and 1937; see petitioners' opening brief, pp. 21-22. For its purpose in determining allocations of new securities, the Commission had no occasion to inquire beyond the two test-period years.

But that test period result will not suffice to discharge the burden of proof on respondents. Their own theory requires that the money for paying the coupons was available in the treasury on each maturity date. Proof of such fact has been essential to their claim from the beginning. The Commission's statement is inadequate for the purpose; respondents are unable to point to anything else.

For the reasons stated in the former brief and herein, the petition prayed for should be granted.

Respectfully submitted,

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JOSEPH B. FLEMING and AARON COLNON, Trustees of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, *et al.*,

Petitioners,

vs.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON and CHARLES G. WOODWARD, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Preliminary Statement.

This brief is submitted in behalf of John C. Traphagen and others as the Protective Committee for the Choctaw and Memphis 5% Gold Bonds (herein called the C&M COMMITTEE) in opposition to the petition for a writ of certiorari filed by the Trustees of The Chicago, Rock Island and Pacific Railway Company (herein called the DEBTOR PACIFIC COMPANY) to review an order and decree of the Circuit Court of Appeals for the Seventh Circuit entered June 17, 1946, reversing an order or decree of the District Court for the

Northern District of Illinois, Eastern Division, in the reorganization proceedings of the Debtor Pacific Company. The opinion of the Circuit Court (R., pp. 245-252) is reported in 155 F. (2d) 889. The opinion of the District Court (R., pp. 156-158) is not reported.

The issue in this case arose with respect to the Choctaw and Memphis First Mortgage 5% Gold Bonds (herein called the C&M Bonds) which upon final reorganization were found to be in so superior a position as to be unaffected by the reorganization Plan. These bonds are protected by a first mortgage lien on a division of the Debtor Pacific Company, including a perfected first mortgage lien on the income of the division. This income, after prior charges, is in excess of the amounts required for the interest on the bonds during the reorganization proceeding. However, the District Court withheld payment of such interest, for periods of upwards of eleven years in instances, because of the cash requirements of the railroad system as a whole and the insufficient earnings of other divisions of the railroad.

The question litigated below was whether the holders of these bonds, under the foregoing circumstances, were entitled to recover interest on the bond coupons from their respective dates of maturity until paid. The District Court disallowed the claim. The Circuit Court of Appeals reversed.

The petitioners in their statement of the matter involved have obscured the narrow issue and simulated others, principally through misplaced emphasis and omission. Since many of the issues sought to be raised are essentially factual, it must be stressed that the factual version of the case presented by petitioners is inadequate. A presentation of the more important facts upon which the Circuit Court of Appeals order is founded, therefore, is necessary.

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Statement of Facts.

The C&M Bonds were issued by Choctaw and Memphis Railroad Company in the principal amount of $3,524,000 under an Indenture (herein called the C&M Indenture) dated January 2, 1899 (R., pp. 61-88). These bonds constitute a first mortgage on 280 miles of railroad extending from the west bank of the Mississippi River opposite Memphis, Tennessee, to the Oklahoma-Arkansas line, on appurtenances to this line, on certain property in Memphis and on "all the rents, issues, tolls and income of said mortgaged railroad hereinbefore described" (R., pp. 66-68).

The Debtor Pacific Company owns all the capital stock of the successor of the mortgagor and, as stated by petitioners below, has never taken title to the mortgaged property "although it could have done so at any time after acquiring all the stock."

In the C&M Indenture, the mortgagor covenanted to pay interest on the bonds "at the times, at the rate, and in the manner mentioned therein, and the coupons thereto belonging, according to the true intent and meaning thereof" (R., p. 71). The coupons appurtenant to the bonds are negotiable in form and contain unconditional promises for payment by the mortgagor on specified semi-annual dates "at its office in the city of Philadelphia, or at its agency in the city of New York" (R., p. 65).

In addition, the C&M Indenture provides that in the event of default for three months in the payment of interest on the C&M Bonds, the trustee of the C&M Indenture may take possession of the mortgaged property and, among other things, "collect and receive all tolls, freights, incomes, rents, issues, and profits of the same, and every part thereof" (R., pp. 74-75). It further provides that such

trustee may, in lieu of taking possession, apply to a court for the appointment of a receiver to exercise such power under the C&M INDENTURE, and the mortgagor assents to the appointment of such receiver (R., pp. 75-76).

On May 2, 1934, the District Court entered its Sequestration Order in the reorganization proceedings of the DEBTOR PACIFIC COMPANY (R., pp. 20-22), in which it was provided (R., p. 21):

> "That no Trustee of a mortgage shall be required to make any further demand or application for the enforcement in this proceeding of any lien or right in respect of any of the tolls, earnings, incomes, rents, issues and profits of the property covered by the mortgage * * *; but the rights of each Mortgage Trustee shall be determined as if due demand or application had been made by such Trustee * * * at the earliest date or dates when any such Trustee would have been entitled to make such demand or application under the terms of the mortgage of which it is Trustee * * *."

The Sequestration Order also provided (R., pp. 21-22):

> "That the respective Trustees of the mortgages shall be entitled to apply at the conclusion of this proceeding, or at such earlier time or times as they may respectively deem proper, upon due notice to all parties of record, for the enforcement of their liens upon, or rights in, the tolls, earnings, incomes, rents, issues and profits in which they may have any interest, and of their liens upon, or rights in, any of the proceeds thereof, and for an equitable adjustment, as between those interested in this proceeding, with respect to any use which may have been made of any of the same; but nothing in this order shall be construed as determining the merits of any such application or as requiring the Trustees to pay over or earmark any of the same pending the further order of the Court."

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Pursuant to the Sequestration Order, formulas were devised for the allocation of earnings reflecting the interests of the various mortgages (R., pp. 28-30). The District Court authorized the discontinuance of the segregation of earnings after one of the formulas had been applied for the period of from June, 1933, to May, 1934, inclusive, because of the labor and expense involved (R., pp. 30-31). The applications of the formula for that twelve-month period showed, however, that the earnings available for interest on the C&M Bonds, after providing for all taxes and prior charges, amounted to $389,884. The interest requirements on the C&M Bonds equal $176,200 per year. Although this first formula was not approved by the court nor accepted by the parties, it was applied by the Trustees, who had no axe to grind.

A second formula was approved by the District Court (R., pp. 49-51) and applied to the earnings of the Denver Pacific Company for the year 1936 and, as adjusted, to the year of 1937 (R., pp. 56-57). These approved formulas became the principal basis adopted by the Interstate Commerce Commission for allocations to security holders under the Plan. The results of applying these formulas show adjusted income of $450,882 available for interest on the C&M Bonds in 1936 and $399,304 so available in 1937, as contrasted with annual interest requirements on the C&M Bonds of $176,200 (252 I. C. C. 483, 488-493).*

The most important point regarding the earnings coverage of the C&M Bond interest—and the point overlooked by the petitioners (petition, pp. 21-23)—is that the Interstate Commerce Commission has expressly found that (R., p. 128):

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* This report is part of the record but, pursuant to stipulation of the parties, has not been printed (R., pp. 233-236).

> "The Choctaw & Memphis is a leased line, and the record establishes the fact that its earnings are substantially in excess of its bond interest requirements."

Repeatedly during the twelve years in which the reorganization has been pending, respondents petitioned the District Court to allow to them their interest as it matured, and, after maturity of the coupons, interest on their coupons (R., pp. 39-44, 104-110, 124-125, 130-135, 198-211). The coupons which matured July 1, 1933, and January 1, 1934, were ordered to be paid on June 26, 1933, and January 29, 1935, respectively (R., pp. 8-9, 32-36). The span of years from 1935 to 1945 witnessed no payment of interest.

After numerous preliminaries, the District Court on May 14, 1945, approved the Plan of Reorganization subject to certain corrections and clarifications. The C&M Bonds alone of all the securities issued by the entire Rock Island system were held to occupy such a superior position as to be unaffected by the Plan. The decree approving the Plan provides that as approved it shall contain the following provision (R., p. 194):

> "The Choctaw & Memphis Railroad Company first mortgage dated January 2, 1899, and the $3,524,000 of 5-per cent bonds issued thereunder and outstanding in the hands of the public shall remain undisturbed and unaffected by the plan, with preservation of lien and rights of bondholders as set forth in said mortgage and said bonds. For the $1,762,000 of unpaid accrued interest to January 1, 1944, the holders of the bonds shall receive cash, as hereinafter stated."

The Plan, as it had been certified by the Commission to the court, provided that the question of whether interest should be allowed on the unpaid matured coupons of the

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C&M Bonds should be determined by the court (R., p. 128). On May 11, 1945, the District Court denied interest on these coupons (R., pp. 156-158).

Respondents appealed from this denial (R., pp. 174-175). The Circuit Court of Appeals unanimously reversed the judgment of the District Court, holding that it was in error to refuse to order the payment of simple interest on the coupons after their respective dates of maturity until the date of payment (R., pp. 245-252).

ARGUMENT.

POINT I.

Whether the C&M Bonds are within or without the Plan does not affect the rights of the holders to recover interest on matured coupons, and therefore it would be pointless for this Court to grant petitioners' request for a review of that issue.

Petitioners' brief, pages 17 to 20, devotes considerable argument to their contention that the C&M Bonds are still a part of the Plan and the reorganization proceedings. It is asserted that the statutory power conferred by Section 77 of the Bankruptcy Act requires that the satisfaction of all claims must emanate from a reorganization plan. Assuming *arguendo* that this is true, it does not affect the recovery by the C&M bondholders of interest on overdue coupons.

The Circuit Court of Appeals proceeded on the basis of the findings and judgment of the District Court, and held that the bonds were "no part of the reorganization, in no wise affected by it, and, so far as rights and remedies are concerned, occupy the same position they would have had there been no bankruptcy" (R., p. 246). Under this theory the doctrine of *Erie Railroad Co.* v. *Tompkins,* 304 U. S. 64

(1938), governed the case. As will be pointed out *infra*, Pennsylvania law would then apply and the bondholders would be entitled to the interest.

If, on the other hand, we accept the position of the petitioners that the rights of the C&M bondholders emanate from the Plan, then, on their theory, *Prudence Corp.* v. *Geist*, 316 U. S. 89 (1942), is applicable. This would require the application of federal law which, as will be pointed out *infra*, does not differ from that of Pennsylvania but also allows recovery on matured coupons.

It would therefore affect no substantial rights for this Court to answer the question, sought to be raised by the petitioners, as to the meaning of the words in the District Court plan decree: "undisturbed and unaffected by the plan."

POINT II.

On the question of the bondholders' right to be paid interest on their matured coupons, the court below followed the Pennsylvania law, which is in conformity with the federal decisions, and therefore no substantial result would be accomplished by this Court if it reviewed the question of which law to apply.

The decision of the Circuit Court of Appeals proceeds on the theory that the C&M bondholders, being adequately secured, protected by impounded income greatly in excess of interest requirements and expressly excluded from the operation of the Plan, are entitled to have their rights determined as if there were no bankruptcy proceeding. The court then held that, under the doctrine of *Erie Railroad Co.* v. *Tompkins*, 304 U. S. 64 (1938), state law should be applied. The coupons are payable in Philadelphia (R., p. 63). Under

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the law of Pennsylvania, the coupons, as negotiable instruments, bear interest from the date of payment.

County of Beaver v. *Armstrong,* 44 Pa. St. (8 Wright) 63 (1862);
Williamsport Gas Co. v. *Pinkerton,* 95 Pa. 62 (1880);
Philadelphia & R. R. Co. v. *Knight,* 124 Pa. 58, 16 Atl. 492 (1889);
Appeal of Cadwalader et al., 249 Pa. 239, 94 Atl. 833 (1915);
McDowell v. *North Side Bridge Co.,* 251 Pa. 585, 97 Atl. 97 (1916).

That the law of Pennsylvania allows interest on overdue coupons has not been contested by the petitioners at any time.

The contention of the petitioners is that under the doctrine of *Prudence Corp.* v. *Geist,* 316 U. S. 89 (1942), the court should have applied federal law. The application of federal law, however, would not help the petitioners. As we pointed out below, and as the opinion of the Circuit Court of Appeals notes (R., p. 250), the federal decisions are in accord with the Pennsylvania law and hold that interest coupons draw interest from their dates of maturity.

Gelpcke v. *The City of Dubuque,* 1 Wall. 175 (1863);
Aurora City v. *West,* 7 Wall. 82 (1868);
Town of Genoa v. *Woodruff et al.,* 92 U. S. 502 (1875);
Cromwell v. *County of Sac,* 96 U. S. 51 (1877);
Brine v. *Insurance Co.,* 96 U. S. 627 (1877);
Amy v. *Dubuque,* 98 U. S. 470 (1878);
Koshkonong v. *Burton,* 104 U. S. 668, 676-7 (1881);

Edwards v. *Bates County*, 163 U. S. 269, 272 (1896);

Roswell Drainage Dist. v. *Parker*, 53 F. (2d) 793, 797 (C. C. A. 10th, 1931);

Sears v. *Greater New York Development Co.*, 51 F. (2d) 46, 49 (C. C. A. 1st, 1931), *cert. denied*, 284 U. S. 668 (1931).

The petitioners attempt to distinguish these cases on the basis that they do not involve bankruptcy proceedings. However, they cannot cite any cases involving bankruptcy proceedings which change the law or which disclose law in favor of their contentions. The decisions are that bankruptcy does not affect the enforceability of a claim for interest if the assets on which the claim is a first lien are adequate to pay interest.

Coder v. *Arts*, 213 U. S. 223, 245 (1909);

American Iron and Steel Manufacturing Co. v. *Seaboard Airline Railway*, 233 U. S. 261, 266-7 (1914);

Board of Commissioners of Sweetwater County v. *Bernardin*, 74 F. (2d) 809, 815 (C. C. A. 10th, 1934), *cert. denied*, 295 U. S. 731 (1935).

Indeed, this much is expressly admitted by the petitioners (brief, p. 26).

Moreover, in an ordinary bankruptcy proceeding, if a claim is secured by collateral which realizes earnings after the date of the filing of the petition, such earnings must be applied to interest accruing on the claim after the filing of the petition.

Sexton v. *Dreyfus*, 219 U. S. 339, 346 (1911).

See, also, the opinion of the court below (R., p. 248).

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It would therefore be profitless so far as the present case is concerned for this Court to review the question of whether state law or federal law applies, since the substantial result of the case would not be affected. The same thing cannot be said of *In re American Fuel & Power Co.*, 151 F. (2d) 470 (C. C. A. 6th, 1945), in which certiorari was granted on March 25, 1946, *sub nom. Vanston Bondholders Protective Committee* v. *Green*, 66 S. Ct. 822. In that case, the Circuit Court of Appeals followed the unusual New York rule and disallowed simple interest on overdue coupons. The opinion recognizes, however, that the federal rule is to the contrary. A review of that case by this Court may, therefore, change the effect of that decision upon the rights of the parties.

The petitioners point out that the mortgage does not specifically mention a lien for interest upon matured coupons. They further assert that by its terms the C&M INDENTURE "affirmatively" shows that there was no intention to pay interest on overdue coupons and that the claim for interest on overdue coupons is "expressly given up." This contention overlooks the fact that the mortgage, the bonds and the coupons do "expressly" provide that the coupons were to be paid on their respective maturity dates.

If any "affirmative" proposition is to be derived from the provision of the relevant documents, it is that the coupon holders were deprived of their rights when they did not receive payment on the coupons as they matured, particularly when there was a perfected lien on earnings available for the payment of such interest. The C&M INDENTURE of 1899 sets forth remedies which were then well recognized in railroad mortgages. It contemplates that those remedies may be exercised promptly. The draftsman of the C&M INDENTURE obviously did not have in mind any situation in which the interest on the C&M BONDS would remain in de-

fault for almost twelve years despite the fact that earnings of the mortgage property were adequate to pay the interest. It is absurd to impute to the draftsman of the mortgage an intent to give up interest on the overdue coupons in the situation here presented. As the Circuit Court of Appeals stated (R., p. 251):

> "But we have seen that the indenture pledges the property to secure the payment of principal and interest according to 'the true tenor' of the bonds and interest and that the true tenor of the coupons, properly interpreted, includes a legal obligation to pay interest after maturity. It follows that, by necessary implication, the mortgage creates and preserves a lien for the bonds, coupons and simple interest on the coupons after maturity."

The petitioners in their brief in support of their petition for certiorari (pp. 21-23) for the first time seek to raise the question of whether the earnings of the mortgaged property were adequate to cover the bond interest requirements, and they present the issue as if this Court should take on the labor of re-examining and re-applying the formulas on which the Interstate Commerce Commission based its findings. The petitioners misconceive the function of this Court in reviewing cases on appeal. The Interstate Commerce Commission expressly found that "the record establishes the fact that its earnings [*i.e.*, those of the Choctaw & Memphis mortgage division] are substantially in excess of its bond interest requirements" (R., p. 128). That finding cannot be questioned for the first time in this Court.

It is argued that if interest be allowed on the overdue C&M coupons there are other bonds in the estate of the Debtor Pacific Company which likewise are entitled to interest on overdue coupons. The record is wholly lacking

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in facts on which the Court could make a determination of that question. That the respondents' assertion in this regard is without foundation may be inferred, however, from the fact that the C&M Bonds alone of all the security issues in the estate of the Debtor Pacific Company are in so superior a position as not to be affected by the Plan.

Conclusion.

The petition for a writ of certiorari should be denied.

September 23, 1946.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1946.

No. 454

JOSEPH B. FLEMING and AARON COLNON, Trustees of THE CHICAGO, ROCK ISLAND AND PACIFIC RAILWAY COMPANY, *et al.*,

vs.

JOHN C. TRAPHAGEN, JAMES E. GOWEN, GEORGE H. WILSON and CHARLES G. WOODWARD, constituting the Protective Committee for holders of Choctaw and Memphis Railroad Company First Mortgage 5% Gold Bonds, due January 1, 1949.

PETITION OF JOHN C. TRAPHAGEN AND OTHERS FOR HEARING AND ARGUMENT.

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PETITION OF JOHN C. TRAPHAGEN AND OTHERS FOR HEARING AND ARGUMENT.

This is an application for reconsideration of, and for permission to submit briefs and to argue, a case in which certiorari has been granted and which has then been reversed by this Court without benefit of either briefs or argument (*per curiam* decision handed down December 16, 1946, not yet reported).

The decision which has thus been summarily reversed was the unanimous decision of the Circuit Court of Appeals for the Seventh Circuit (R., p. 245; 155 F. [2d] 889).

That decision was made in the first case to reach this Court, under either Section 77 or Chapter 10 of the Bankruptcy Act, involving the rights of security holders who

have been found to be in so superior a position as to be unaffected by the plan of reorganization. The Choctaw & Memphis Bonds which are here involved have been expressly found to be in that position (R., p. 194).

This case is also only the second case to reach this Court on the question of the allowance of simple interest on overdue bond coupons in a bankruptcy or other reorganization.*

It is the first case to reach this Court on the question of the allowance of such interest in such a proceeding where, during the time when the coupons matured, they were protected by a lien, duly perfected by a sequestration order (R., p. 21), on earnings substantially in excess of the coupon requirements.

This case was reversed *per curiam* on the authority of *Vanston Bondholders Protective Committee* v. *Green*, decided December 9th, Nos. 42 to 45, October Term, 1946.

Under the *Vanston* case, the question of whether simple interest on overdue coupons should be allowed is a question to be determined by the bankruptcy court sitting as a court of equity. In that light the *Vanston* case was decided on its own unique facts: "under the circumstances shown by this case" (slip sheet opinion, pp. 5-6). Moreover, the *Vanston* case holds that "the touchstone of *each decision* on allowance of interest in bankruptcy, receivership and reorganization has been a balance of equities

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* This Court's decisions where bankruptcy or reorganizations were not involved, however, have universally allowed such interest contrary to the *per curiam* decision in the instant case. *Gelpcke et al.* v. *The City of Dubuque*, 1 Wall. 175 (1863); *Aurora City* v. *West*, 7 Wall. 82 (1868); *Town of Genoa* v. *Woodruff et al.*, 92 U. S. 502 (1875); *Cromwell* v. *County of Sac*, 96 U. S. 51 (1877); *Brine* v. *Insurance Co.*, 96 U. S. 627 (1877); *Amy* v. *Dubuque*, 98 U. S. 470 (1878); *Koshkonong* v. *Burton*, 104 U. S. 668, 676-7 (1881); *Edwards* v. *Bates County*, 163 U. S. 269, 272 (1896); *Sears* v. *Greater New York Development Co.*, 51 F. (2d) 46, 49 (C. C. A. 1st, 1931), *cert. denied*, 284 U. S. 668 (1931).

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between creditor and creditor or between creditors and the debtor" (*ibid.* p. 7; emphasis added).

The question which is made the test in the *Vanston* decision—namely, the equities arising from the circumstances shown by each particular case—was expressly reserved in the instant case, when the sequestration order provided that the trustees of the respective mortgages should be entitled, at the conclusion of the proceeding, to apply for the enforcement of their liens upon tolls, earnings, profits, etc., "and for an equitable adjustment, as between those interested in this proceeding, with respect to any use which may have been made of any of the same * * *" (R., pp. 21-22).

This Court has never had opportunity to consider the circumstances which exist in the instant case and out of which strong equities in favor of the Choctaw & Memphis bondholders arise.

The circumstances in the instant case materially distinguishing it from the *Vanston* case are as follows:

1. As stated above, the bonds in the instant case have been ordered to "remain undisturbed and unaffected by the plan, with preservation of lien and rights of bondholders as set forth in said mortgage and said bonds" (R., p. 194). This order results from the provisions in Section 77 which put a security outside the scope and purposes of that section when it is so imperviously secured as to be undisturbed by the bankruptcy turbulence affecting all its juniors. As the court below stated (R., pp. 247-48):

> "But this power to deal with or modify securities, we think, in no way affects appellants [*i.e.*, Choctaw & Memphis bondholders] who are no part of the reorganization but constitute secured holders of instruments wholly unaffected thereby. Hence it is

> improper to say that the bankruptcy court had the power to alter their securities. Indeed, quite the contrary is true, for, in their preferred situation, they hold securities wholly outside the reorganization."

Only through the plan can creditors' rights be permanently affected and readjusted. But it is a travesty to say that a security is unaffected if no compensation is allowed for the withholding of its interest for as much as eleven years. Only by ignoring actuality can one say that the right to receive money today can be turned into a right to receive money eleven years from now without affecting the value of that right.

Indeed, this Court has recognized the realities of such an extension of maturity date. In *Consolidated Rock Products Co.* v. *Du Bois*, 312 U. S. 510, 527-28 (1941), immediately preceding the often quoted language that "full compensatory provision must be made for the entire bundle of rights" of a creditor, the opinion discusses the fact that the bondholders in that case had not been "made whole" because, among other reasons, their maturities had been in part extended, and the maturities thus extended were referred to as "lost rights" which were "of value." Except for tax purposes, the value of the right to receive money on a given date does not have any relationship to the question of whether the money is being paid and received by way of principal or by way of interest.

A creditor cannot, therefore, be said to be unaffected if the maturity date of an obligation of the debtor to pay money to him is materially extended.

2. In this case, the Choctaw & Memphis Bonds had a perfected lien on earnings substantially in excess of the bond interest requirements, and these earnings were pro-

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duced by the property covered by the Choctaw & Memphis mortgage. In the words of the Circuit Court of Appeals, "the annual earnings properly allocable to the division upon which they are a lien exceeds substantially the interest requirements" (R., p. 246). But for the hand of the bankruptcy court which, for the benefit of the junior interests, stayed the payment of the interest coupons as they matured, the Choctaw & Memphis Bonds had an enforceable right to receive, out of such earnings, payment of the coupons on their maturity dates.

Although the earnings subject to the lien of the Choctaw & Memphis mortgage were not segregated, they were a part of the cash in the hands of the Trustees of the Debtor and should have been dealt with in the light of the fact that there was a first mortgage lien on those earnings for the protection of debts which had not been paid when due. And by debts, the interest coupons are referred to and not the bonds themselves; for interest coupons, being promises to pay certain sums on definite due dates, are commercial paper in their own right, as has been often held by this and other courts.*

3. The bonds which are here involved were originally issued when Choctaw & Memphis Railroad, which is the best earning division of the Rock Island line, was a separate and independent railroad. Choctaw & Memphis, by successive leases and consolidations, has become a part of the Rock Island system without any acquiescence on the part of the holders of the Choctaw & Memphis Bonds. This, however, is no cause for complaint if the senior position of the Choctaw & Memphis Bonds with respect to their mortgage division is not to be impaired.

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* See, for example, the cases cited, *supra*, footnote, page 2.

It is not contended that the court, having the task of operating this railroad system pending reorganization, is without power to take funds on which A has a perfected lien, in order to operate the less prosperous properties on which B has a lien or claim. But it is most strenuously urged that when the delay in reorganizing the properties and putting them back in the hands of owner-operators arises from disputes and controversies between parties junior to A, then it is most inequitable for the court, in order to operate the properties pending determination of those disputes and controversies, to borrow funds on which A has a perfected first lien without compensating A for such borrowing.

4. In this case, the Interstate Commerce Commission, in approving the plan as it was certified to the District Court, provided for extending for twenty years the maturity date of the Choctaw & Memphis Bonds and lowering their interest rate from 5% to 4% (R., pp. 164-5). It was thereafter that the bonds were found to be in so superior a position as to be unaffected by the plan (R., p. 189 at 193-4). However, the Commission's order on the plan as certified by it provided that the Choctaw & Memphis Bonds were to receive interest on overdue coupons if the court should determine as a legal matter that they are entitled to it (R., pp. 128, 164). The Interstate Commerce Commission, as the expert body charged by Congress with formulating plans, was therefore of the opinion, as a matter of equity—since its task is to formulate a *fair* and *equitable* plan—that the Choctaw & Memphis Bonds should have their right to interest on overdue coupons recognized if such right legally exists. Clearly that right does exist under the law of Pennsylvania, which, aside from the doctrine of the *Vanston* case, nobody has disputed is the applicable law with respect to these coupons.

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Williamsport Gas Co. v. *Pinkerton*, 95 Pa. 62 (1880);
Appeal of Cadwalader et al., 249 Pa. 239, 94 Atl. 833 (1915);
McDowell v. *North Side Bridge Co.*, 251 Pa. 585, 97 Atl. 97 (1916).
See also opinion below, R., p. 245 at 250.

What, then, are the equities which would move the bankruptcy court, sitting as a court of equity, to strike down this well recognized right? Equities arise out of facts, and whether a particular equity has its basis in reality or in imagination can be determined only from factual analysis and experience. It is therefore of significance that the Interstate Commerce Commission felt as it did. It is likewise of significance that the Securities and Exchange Commission, with its vast experience in reorganizations under Section 11 of the Public Utility Holding Company Act and as adviser to the courts under Chapter 10 of the Bankruptcy Act, should feel that interest on overdue coupons should be allowed.* If the test is a test of whether or not it would be equitable to allow simple interest on overdue coupons, that test can be applied only through a careful sifting of the record to determine where the equities lie in a particular case.

5. When the habit of defaulting on the Choctaw & Memphis bond interest was formed in the early days of this reorganization proceeding, the only alternative to borrowing money from the funds on which those bonds had a per-

* See *Matter of Childs Company, Debtor*, SEC Corporate Reorganization Release No. 67 (1946), pp. 39-40; same case, SEC Corporate Reorganization Release No. 69; same case, CCH Bankruptcy Law Service, par. 55,779 (U. S. D. C., S. D. N. Y., 1946); see, also, brief of Securities and Exchange Commission in *Vanston* case.

fected lien was to borrow additional money from outsiders. Clearly, such a borrowing on trustees' certificates would have borne interest, as is illustrated by the trustees' certificates which in fact were issued in this case.

It cannot be said that a court can take A's money and lend it to B interest free merely because the court already has A's money in its custody. The custody over the fund does give the court, as a court of equity, authority to compel the loan, but only on terms which in equity recognize the full rights of A. In other words, the court had custody of the impounded funds of the Choctaw & Memphis division which were available for the payment of the Choctaw & Memphis interest coupons as they matured and which, but for the court's intervention, would have been paid on the Choctaw & Memphis coupons as they matured. Therefore, when the court deprived the holders of those coupons of their interest moneys on the due dates, it could do so in equity only by compensating the holders for such deprivation of substantial and valuable rights.* Any other holding is not equitable. It is not even well directed charity; for the senior securities in railroad reorganizations are for the most part held by insurance companies and fiduciaries whose *cestuis* are dependent upon them, whereas junior securities by and large are more apt to be held by persons who are willing and able to speculate.

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* It is suggested that if this Court, after considering the instant case on the basis of briefs and argument, should feel that the legal right to interest under the Pennsylvania law must be stricken down under some bankruptcy doctrine, nevertheless under the doctrine of the *Vanston* case, the bankruptcy court, as a court of equity, should compensate the Choctaw & Memphis bondholders for the use of their funds by the payment of interest, not at the legal rate in Pennsylvania, but at the prevailing rates existing from time to time as the funds subject to the lien of the Choctaw & Memphis mortgage were borrowed—*i.e.*, at the rate or rates which the Trustees of the Debtor would otherwise have had to pay.

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6. The instant case presents squarely to the Court the issue which is reserved in the concurring opinion of Mr. Justice Frankfurter in the *Vanston* case. That opinion shows that under the law of New York, where the *Vanston* coupons were payable, interest on overdue coupons is not allowed. There was, therefore, no legal right which the bankruptcy court had to consider. Here we have bond coupons which are clearly governed by the law of Pennsylvania. No one has disputed that. Under the law of Pennsylvania, these bond coupons have a legal right to interest if they are not paid on their due dates. (See cases cited *supra*, p. 7.) That right is *not* a penalty. The Pennsylvania cases are clear that the right arises from the fact that a bond coupon is independent commercial paper, passing in the market as a negotiable instrument, and therefore, like such instrument, bearing interest from its maturity date if not paid.

A secured debt other than a coupon has always borne interest even in a bankruptcy or reorganization proceeding if the security was adequate,* or if the earnings of the property securing the debt were adequate for the payment of interest.† Therefore, the question is squarely presented whether Congress in the Bankruptcy Act has enunciated any doctrine which prevents the recognition of what is in this case a clear legal right—an issue which was not really before the Court in the *Vanston* case in view of the New York law as pointed out in the decision by Mr. Justice Frankfurter.

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* *Coder* v. *Arts*, 213 U. S. 223, 245 (1909); *American Iron and Steel Manufacturing Co.* v. *Seaboard Airline Railway*, 233 U. S. 261, 266-7 (1914); *Consolidated Rock Products Co.* v. *Du Bois*, 312 U. S. 510, 527 (1941); *Group of Institutional Investors* v. *Chicago, Milwaukee, St. Paul & Pacific Railroad Company*, 318 U. S. 523, 546 (1943).

† *Sexton* v. *Dreyfus*, 219 U. S. 339, 346 (1911).

In view of the fact that there has been no hearing in this case, this is not an application for a rehearing. However, by analogy to the procedure prescribed by Rule 33 of this Court, counsel hereby certifies that this petition is presented in good faith and not for delay.

In view of all the foregoing considerations, this Court is respectfully urged to reconsider its *per curiam* decision of December 16, 1946, and in connection with such reconsideration to permit the filing of briefs and the presentation of oral argument on the issues involved in this case.

January 2, 1947.

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No. 454. FLEMING ET AL., TRUSTEES, ET AL. *v.* TRAPHAGEN ET AL. On petition for writ of certiorari to the Circuit Court of Appeals for the Seventh Circuit. December 16, 1946. *Per Curiam:* The petition for writ of certiorari is granted and the judgment is reversed on the authority of *Vanston Committee* v. *Green*, 329 U. S. 156. *W. F. Peter* for petitioners. *Daniel James* for respondents. Reported below: 155 F. 2d 889.